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DOCUMENTARY HISTORY

OF

SLAVERY IN THE UNITED STATES.

BY A NATIVE OF MARYLAND.

WASHINGTON:
PRINTED BY JNO. T. TOWERS
1851.

be virtues, and operate as vices; that every society must conform to its circumstances; that this is its law, and not the abstract rights of humanity in any imaginary state of nature.

We are, at times, filled with amazement when we reflect upon the blind fury with which some, or the thoughtless alacrity with which others, have rushed into difficulties of such sombre aspect, so full of dark and treacherous mazes. That boisterous multitude, and those designing demagogues who have led the more scrupulous and moderate of our population into this fatal course of disunion doctrines, will be among the last, neither capable nor willing, to afford them consolation and support when the extent of the mischief begins to develope itself, and the tide of popular resentment to set irresistably against its authors. Truly, the leading men of the several States, the householders, the fathers of families, the well-meaning christians of the land, undertake an awful responsibility before the tribunal of God and of the world, when they sanction the proceedings of the agitators and seceders, animated by such passions, aiming at such objects as we have described, in a proceeding that threatens to make "*an eternal rent and schism*" in the American empire; to blast entirely our present tranquil and smiling lot; to convert the present rich and honorable inheritance of our children into one of desolation; to reduce them under a yoke of the basest servitude; to alienate from us the esteem and the good will of all nations; forever and irreproachably to tarnish the American name.

They must be worse than blind who do not see all these results in a disunion commenced under auspices, than which none more deplorable can be imagined within the limits of human misfortune and error.

We enter upon this state of things as a divided people. This it is impossible to conceal or deny. The inflammatory addresses, emanating from ill-designing demagogues, show it; the ominous voice of indignation and alarm resounding from the Atlantic to the Pacific, show it; the votes in Congress on the Compromise Bills, show it. The division is precisely of that nature from which, unless speedily arrested, a dissolution of the Union must result. It is between the two great dissimilar sections of the Confederacy. It is on account of primary fundamental interests. It is, on one side, exasperated to the utmost by the darkest insinuations. It is connected with, and naturally inflames, passions and prejudices of a kind the most inveterate and dissociable, and which, if not allayed, nothing short of open rupture can satisfy. The true and only tenacious ties of the Confederacy are *mutual confidence* and interest, *mutual* esteem and regard, equal protection and equal burdens. When these are dissevered, when the bond which originally induced and can only preserve the unity of our nation is disrupted, the cohesion is at an end, and it is in vain to expect that the disjointed parts of the great fabric can be long kept together by engagements or punishments, or metaphysical subtleties, or impotent menaces.

The American Union has, indeed, survived many rude shocks already, but we must not forget that this good fortune has not been achieved by a supine folding of hands and sitting still in the hour of danger. No; it has been the result of constant vigilance and discreet foresight. The Union has survived, because the wise and prudent stepped forward in critical periods, and men were guided by councils of prudence and wisdom. It survived by the timely and judicious application of remedies to evils—not by the perverse blindness and wilful obstinacy that will see no danger till too late, but cry "peace, peace, when there is no peace."

It was easy to understand that the hostile feelings that now so unfortunately convulse different sections of the Confederacy might be temporary, but at the same time it was to be recollected that the occurrence of this temporary estrangement of feeling at a moment when a general spirit of discontent is pervading the country, under the influence of conflicting views. which are so seriously felt—it was not unnatural that antagonistical animosities, under more favorable circumstances, might grow into a permanent system. We have only to look at the discussions of the newspapers to be satisfied that the excitement is not circumscribed. In order to arrive at the true complexion of our situation, we must see fully the amount and extent of the discontent that now disturbs the peace and quiet of the country. The more accurately we canvassed it, the more we should be convinced that it was of universal description—that it was not general, but searching—that there was not one filiment or fibre, we might say, in the whole system of our confederated Government, that did not feel its deadening influence, and was actually inert in the exercise of its functions.

The organization of the General and State Governments exhibits the most remarkable combination of checks and balances, of individual and State security, ever known. The General Government, as it regards the nation, has a sovereign and controlling power over the thirty State Governments, while each of these, independent and sovereign for

all local and State purposes, depends on and is connected with the General Government by the strong attraction of its national interests. The General Government, like the sun in the solar system, is the centre of attraction and the bond of union; and its provisions for the common defence and general welfare, like the rays of the sun, give life and activity to the nation. As the planets in their revolutions around the sun have their distinct spheres of action and control, so the States separately possess complete sovereignty, each within its own jurisdiction and limits, extending to its citizens protection to life, liberty, and property. How much it is to be lamented, that a system so beautiful in theory, and so beneficial in practice, shall be disturbed by that firm, *fanatical spirit*, that prince of the power of the air, who can invade every sphere; that demon who can pass the bounds of every State; and, by sowing discord and division, destroy the harmony of the system, overturn the most valuable institutions, and endanger the union of this Republic.

The question of slavery is one, in all its bearings, of extreme delicacy, and concerning which we know of but a single wise and safe rule, either for the States in which it exists, or for the Union. It must be considered and treated entirely *as a domestic question*. With respect to foreign nations, the language of the United States ought to be, that it concerns the peace of our own political family, and, therefore, we cannot permit it to be touched; and in respect to the slaveholding States, the only safe and constitutional ground on which they can stand is, that they will not permit it to be brought in question either by their sister States or by the Federal Government. It is a matter belonging exclusively to the slaveholding States. To touch it at all is to violate their most sacred rights—to put in jeopardy their dearest interests, the peace of our country, the safety of their families, their altars, and their firesides.

Slavery, either in its most obsolute or more qualified form, as it existed in ancient times and among other nations, or in modern times in our own, is too well understood to define it; nor shall we enter upon any elaborate disquisition as to its origin, its history, its abuse, or the principles upon which it is justified. Our duty will be to inquire only whether it has had a legal existence.

Property is the creature of the law; whether of the natural or social law, is not material now to be ascertained. Its enjoyment, therefore, may be modified by law. We will not argue, as an abstract question, *whether slaves are property*. Powers far superior to ours in argument would only shake the firm foundation upon which this right is based, by attempting to fortify it. We will only refer, as matter of history, to several eminent instances in which it has been clearly recognised by Federal authority. The legislative records of the several States, from the earliest period to which we can refer, prior to the Revolution, as well as subsequent to that event, prove that not only slavery existed and was tolerated, but that it was recognised and treated as a legal institution. The master's claim of property in his slave, his power and authority over him, to limit and restrain, to sell and transfer him to another, have been, by repeated acts both of the Colonial and State governments, again and again recognised, protected, defined, and regulated.

Slavery was introduced among us during our colonial state, against the solemn remonstrance of our legislative assemblies. Free America did not introduce it. The Revolution which made us an independent nation found slavery existing among us. It is a calamity entailed upon us by the commercial policy of the parent country. [See Hargrave's Argument, in Somersett's case, 11 State Trials, 346.]

If it be one of those great and moral precepts and injunctions, which is discoverable by the light of reason, that no man may make his fellow-being his slave, it is one of those precepts, or injunctions, which every man and every community have interpreted and applied for themselves. Whatever the precept may be, by whomsoever and wheresoever pronounced, it has always encountered the fact, that mankind have always been divided into *masters* and *slaves*. Whatever changes the world and society have undergone in other respects, thus far it has undergone none in this, excepting in some few communities, where slavery has ceased.

The right of life over a captured enemy was gradually ameliorated into a right unto the services, labor, and obedience of the captive. We read of Andromache, in the Iliad, bitterly bewailing her anticipated slavery; and in the Odyssey, the Phœnecians are described as robbers and kidnappers of human flesh.

The monuments of Africa, which have survived all history and tradition, prove nothing so distinctly as their own antiquity, and that they were raised by the toil of slaves.

The same distinction is found among Jews and Gentiles; among Greeks and barbarians; among Romans and strangers. The Romans, the Greeks, and other nations of antiquity, held slaves at the time Christianity first dawned on society, and the professors of its mild doctrines never preached against it.

In the Roman Republic, the practice of predial and domestic slavery was countenanced. There were instances of private persons owning singly no less than four thousand slaves. [1 Gibbon's History, p. 66, 67.]

Hume, in his Essay on the Populousness of Ancient Nations, says that some great men among the Romans possessed the number of ten thousand slaves. Mr. Blair, in his Inquiry into the state of Slavery among the Romans, (1833,) assigns as many as three slaves to every free person in Italy, in the time of the Emperor Claudius. Almost all the agricultural as well as domestic labor, was performed by slaves, even from the time of Tiberius. [Plutarch's life of T. Gracchus. Hawke's Roman History, b. 1, ch. 7.] Barbarian captives, taken in war, were considered slaves, and purchased by slave merchants for Italy.

But if the Abolitionists are guided by that evidence upon which the Christian system is founded, they will find that religion is not against it. They will see, from Genesis to Revelations, the current setting strongly that way. There never was a government on the face of the earth but what permitted slavery. The purest sons of freedom in the Grecian Republics, the citizens of Athens and Lacedæmon, all held slaves. On this principle the nations of Europe are associated; it is the basis of the feudal system.

The Carthagenians are known to have had black slaves; and it seems equally certain that the Greeks and Romans had numbers of them; but modern Europe was scarcely acquainted with the existence of the negro race, when (as Anderson tells us in his History of Commerce) the Portuguese, under the reign of the Infant Don Henry, about the year 1443, under a commander named Alonzo Gonzales, began to transport the natives of Guinea, in order to sell them to the Spaniards. The trade being lucrative, companies were formed at Lagos to carry it on from Senegal and from Cape de Verde. Orliz di Zuniga, the historian of Seville, about thirty years later, relates that the Spaniards, who had been accustomed to obtain slaves by the intervention of the Portuguese, began in his time to carry on the trade direct from the ports of Andalusia to the coast of Guinea. The number of slaves in the city of Seville at that time was very considerable. The slavery of the blacks seems, from the time we are now speaking, to have followed the transplantation of the sugar cane, which has been cultivated successively in Spain, in the Madeiras, in the Western Isles, in the Canaries, and lastly in the American Archipelago, and on some parts of the Continent.

Slavery ceased in Europe towards the middle of the thirteenth century, but from what operative causes it is not necessary to examine; but, unquestionably, not from any new discovery that slavery was forbidden by any law, human or divine. If there had been any positive prohibition by any law, by whatever name it may be distinguished, this law would have appeared, and would have been found in practice, at some time before the beginning of the fourteenth century.

Modern slavery began on Portuguese capital, protected and encouraged by royal authority.

In England, now so *distinguished in the abolition,* no question of the legality of holding slaves appears to have been raised; but every possible proof is found *that it was considered as on the same footing as any commerce.* Between the years 1618 and 1672, there were no less than four chartered companies to deal in slaves, the last of which was dignified with the name of the Royal African Company, and had among its subscribers the King of England, his royal brother, and many persons of high rank and quality, and was founded on a capital of £110,000. As late as 1750, an act was passed by the English Parliament for extending and improving the trade to Africa.

All nations were eager to seize the opportunity of deriving profit from a traffic (as late as in the year 1783) even asserted upon the floor of Parliament "*to be necessary,* in a commercial view, to all commercial nations;" and which was not then considered by any nation as inconsistent with the rights of humanity or the laws of nations. The contract of the *Assiento,* which was obtained by England for a limited time, under the 12th article of the treaty of Utrecht, was a legitimate source of wealth and prosperity to her, and afforded a special encouragement to her maritime enterprise, which must ever be considered a political object by her statesmen.

In the year 1689, England made a regular convention with Spain for supplying the Spanish West Indies with negro slaves from the island of Jamaica. The twelfth article of the treaty of Utrecht, (1713,) grants to her Britannic Majesty, and to the company of her subjects appointed for that purpose (the South Sea Company)—as well the subjects of Spain as all others being excluded—the contract for introducing negroes into several parts of the dominions of his Catholic Majesty in America, (commonly called *El pacto de el Assiento de Negros,*) at the rate of 4,000 negroes annually, for the space of thirty years successively.

To this compact there have been two pointed references in the British Parliament. "By the treaty of Utrecht," said Mr. Brougham, (June 16, 1812,) "what the execrations of ages have left inadequately censured, Great Britain was content to obtain, as the whole price of Ramuielles and Blenheim, an additional share of the accursed slave trade."

Among the Germans slavery was recognised as one of the principles of national law. [Woll de Nat. Rel. 201. Molloy de Marit Lib. 3, cap. 1.] In the rude outline of the feudal system, with all its modifications of villeinage and under-servitude, may be clearly deduced the general practice of slavery in the north of Europe. Egypt, Carthage, Sicily, and every nation of antiquity have deeply incorporated in their social systems the institution of slavery.

In a case of great importance, on an appeal to the High Court of Admiralty, the whole doctrine of slavery was reviewed, and the following strong and marked language was used by Sir William Scott, in delivering the judgment of the court:

"Let me not be misunderstood or misrepresented as a professed apologist for the practice, when I state facts which no man can deny, that personal slavery, arising out of forcible captivity, is coeval with the earliest history of mankind; that it is found existing (and, so far as it appears, without animadversion) in the earliest and most authentic records of the human race, and was recognised by the laws of the most polished nation of antiquity; that under the light of Christianity itself, the possession of persons, so acquired, has been, in every civilized country, invested with the character of property, and secured as such by all the protection of laws; that solemn treaties have been formed and national monopolies eagerly sought to facilitate and extend the commerce of this asserted property; and all this with the sanction of law, public and municipal, and without any opposition."

It is matter of notorious history, that both in ancient and modern Europe the condition of slavery and commerce in slaves were sanctioned by the universal practice and law of nations. [See Hallam's Middle Ages, vol. iv, p. 221; Gibbon's Decline and Fall, vol. i, p. 63.] The very definition of slavery in the civil law, which has been copied by writers on public law, shows that it was an institution established by private law, against the law of nature. *Servitus est constitutio juris gentium, qua quis dominio alieno contra naturam subjicitur.* [See Domat. Loix. civ. Prel. tit. 2, sec. 3]

In 1689, all the judges in England, with the eminent men who then filled the offices of attorney and solicitor-general, concurred in opinion that negroes were "merchandise," within the general laws of the navigation act. [See Chalmer's Opinion of Eminent Lawyers, 263.]

The first case relating to the African slave trade is that of Butts *vs.* Penn, determined in the 29th of Charles II., being trover for negroes. The special verdict found that they were usually bought and sold in India. [See 2 Keeble, 785; 2 Lev., 201.] In a subsequent case, trover was brought for a negro in England. Holt, C. J., said, that trespass was the kind of action, but that *trover* would lie, "if the sale was in Virginia." Other cases bear upon questions as to the form of action, but they all concur in establishing the right of this species of property. [See 2 Salk, 666; 1 Lord Raym, 146; 5 Mod. Rep. 185.]

In connexion with this question of personal property it may be remarked that the ancient law of England made the *villein* or *English slave* inheritable estate, and passed him like the land; that the laws of all the British West India islands in 1782 contemplated the negroes as real estate; that the French colonial laws considered them, in several important particulars, like immovable property; that the ancient Romans held them to be like lands; *that the prescriptive laws of nations,* as established by the practice of Great Britain, France, Spain, &c., restored and *delivered them up,* after war, as and with real estate, not only in capitulating islands conquered from each other, but even, as in the Grenada and the Grenaders, in islands conquered unconditionally, or *without capitulation.*

We found slavery engrafted in the very policy of the country before the organization of the Government, and we are persuaded of the impolicy of rashly interfering with it; if it be a moral evil, it is like many others which exist in all civilized countries, and which the world quietly submits to. Humanity has been a topic of declamation on this subject; that sentiment has different operations on different individuals. It was humanity that first gave origin to the transportation of slaves from Africa to America. Bartholomew de las Casas, Bishop of Chiapa, a Spaniard renowned for his humanity and virtues, in order to save the Indians in South America from slavery, prevailed on his monarch to substitute Africans, which were accordingly purchased and shipped to the Spanish colonies to work in the mines. [See Robertson's History of America; see, also, Don Onis,

the Spanish Ambassador, letter to Mr. Adams, Secretary of State, 14th May, 1818.] "The introduction of negro slaves into America was one of the earliest measures adopted for the improvement and prosperity of these vast dominions." [Bancroft's History of the United States, vol. 1, pp. 182, 183.] The Spaniards and Portuguese dealt in the traffic of African negroes, as slaves, even before the discovery of America. [Ib., v. 1, pp 178, 179.]

In the history of the relations of Great Britain with the American colonies, there is no circumstance more demonstrable than her steady determination to maintain the slave trade in the greatest activity and extent, whatever might be their feelings of disgust and apprehension, and however gloomy the aspect which the continuation gave to the colonies. Their permanent welfare, their immediate comfort, were not considered, when brought in competition with the prosperity of the Royal African Company.

Slavery, as it now exists in the United States, can never be made a matter of reproach to the existing Government, or the present generation. It was an evil introduced into the colonies by the parent State, and acquiesced in to a great degree by the colonies themselves, in an age when the traffic in slaves was pursued by all nations without a suspicion of its enormity.

The Northern colonies participated in it equally with the Southern, and the navigation of the New England ports was employed continually on the African coast in the transportation of slaves to the different American markets, and by means of American capital. There can be no reproach, therefore, cast upon the South for the introduction of this evil which, we conceive, will not equally attach to the North and to the English nation. We were all equally disposed to embark in the traffic, and avail ourselves of its proceeds; and the guilt, if any there be, must be shared in an equal degree by the parties concerned.

CHAPTER II.

Slaves recognised as Property by the old Congress, before the Declaration of Independence.

The Declaration of Independence, the basis of our free government, declares that all men are created free and equal; and the Constitution of the United States proclaims that the people formed a system to secure the blessings of liberty to themselves and their posterity; yet, by express language of the latter instrument, the relation of slave and master is recognised; showing that the framers of the Constitution did not deem this general declaration in favor of liberty incompatible with its other provisions; and it has never been judicially determined that slavery in the United States was thereby abrogated. On the contrary, it has often been adjudged, both by State and Federal Courts, that slavery still exists; that the master's right of property in the slave has not been affected either by the Declaration of Independence or the Constitution of the United States. The right to seize and capture, transport to this country, sell and subject to bondage the native African was not only tolerated, but adjudged lawful long after the adoption of the Constitution, and was only abolished by special act of Congress.

Journal of the Continental Congress, October 20, 1774.

NON-IMPORTATION COVENANT.

"ARTICLE 2. We will neither import nor purchase any slave imported after the first day of December next; after which time we will wholly discontinue *the slave trade*, and will neither be concerned in it ourselves, nor will we hire our vessels nor sell our commodities or manufactures to those who are concerned in it.

"The foregoing association being determined upon by the Congress, was ordered to be subscribed by the several members thereof; and, thereupon, we have hereunto set our respective names accordingly.

"In Congress, Philadelphia, October 24.

"Signed. PEYTON RANDOLPH, *President.*

"*New Hampshire.*—John Sullivan, Nathaniel Folsum.

"*Massachusetts Bay.*—Thomas Cushing, Samuel Adams, John Adams, Robert Treat Paine.

"*Rhode Island.*—Stephen Hopkins, Samuel Ward.

"*Connecticut.*—Eliphalet Dyer, Roger Sherman, Silas Deane.

"*New York.*—Isaac Lowe, John Alsop, James Duane, William Floyd, Henry Wisher, S. Boerman, Philip Livingston.

"*New Jersey.*—James Kinsey, William Livingston, Stephen Crane, Richard Smith, John De Hart.

"*Pennsylvania.*—Joseph Galloway, John Dickinson, Charles Humphries, Thomas Mifflin, Edward Biddle, John Merton, George Ross.

"*New Castle, Del.*—Cæsar Rodney, Thomas McKean, George Read.

"*Maryland.*—Milton Tilghman, Thomas Johnson, William Paca, Samuel Chase.

"*Virginia.*—Richard Henry Lee, George Washington, Patrick Henry, jr., Richard Blair, Benjamin Harrison, Edmund Pendleton.

"*North Carolina.*—William Hooper, Joseph Hughes, R. Caswell.

"*South Carolina.*—Henry Middleton, Thomas Lynch, Christopher Gadsden, John Rutledge, Edward Rutledge." [See Journal of the Provincial Congress, p. 736.]

In looking over the Secret Journal of Domestic Affairs of the Continental Congress, a report and resolutions will be found which will be perfectly conclusive upon this question. The report was made on the 29th of March, 1779. It will be recollected that during the war of the Revolution the British enlisted slaves as troops, and that the period already referred to was one of great gloom and despondency in the South; and then, if ever, as the enemy were enlisting the slaves of the southern planters, the Continental Congress might have found strong arguments for combating them with the same species of force, especially as by refraining from doing so the slaves were not only lost to the owner, but were added to the military force of the enemy. The proceedings of Congress on this occasion display that combination of wisdom and prudence for which that body was so justly distinguished. The report states that the delegation of South Carolina in Congress had represented the distressed state of the country, the desertion of the negroes to the enemy, and that those who still remained were exposed to their artifices and temptations; that if they were embodied, this desertion might be prevented, and they might be rendered formidable to the enemy, &c. Whereupon, "*Resolved,* That it be recommended to the States of South Carolina and Georgia, if they shall think the same expedient, to take measures" for raising a force of this description. By another resolution it was declared "that Congress will make provision for the proprietors of such negroes, &c., a full compensation for the property," &c. &c. [See Secret Journal, pages 107–8.] This recommendation of Congress was not adopted. It is not at all material to the purpose for which we have quoted the Journal to ascertain that fact. The report and resolutions show conclusively the sense of the Continental Congress, that the slaves were not to be employed without the consent of the local authorities; and, if employed with that consent, that the owners were to receive full compensation for the property—thus recognising the principle that slaves were considered as property.

The old Congress, of 1782, expressly sanctioned the right of slavery when they passed the following resolutions:

Resolved, That the Secretary of Foreign Affairs be and he is hereby directed to obtain, as speedily as possible, authentic returns of the slaves and other property which have been carried off or destroyed in the time of the war by the enemy, and transmit the same to the Minister Plenipotentiary for negotiating peace.

Resolved, That in the mean time the Secretary for Foreign Affairs inform the said Minister that many thousands of slaves and other property to a very great amount, have been carried off or destroyed by the enemy; and that, in the opinion of Congress, the great loss of property which the citizens of the United States have sustained by the enemy, will be considered by the several States as an insuperable bar to their making restitution or indemnification to the former owners of property, what has been or may be forfeited, or confiscated, by many of the States. [See 1 vol. State Papers, page 333.]

On the 26th May, 1783, the following preamble and resolution were carried without a division:

"On motion of Mr. Hamilton, seconded by Mr. Izard.—Whereas, by the articles agreed upon on the 30th of November last, by and between the Commissioners of the United States of America for making peace, and Commissioners on the part of his Britannic Majesty, it is stipulated that his Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States, and from every port, place, and harbor within the same; and whereas, a considerable number of negroes belonging to citizens of these States have been carried off therefrom, *contrary to the true intent and meaning of the said articles:*

"*Resolved,* That the copies of the letters between the commander-in-chief, Sir Guy Carleton, and other papers on this subject, be transmitted to the Ministers Plenipotentiary of these States for negotiating peace in Europe; and that they be directed to remonstrate thereon to the court of Great Britain, and take proper measures for obtaining such reparation, as the nature of the case will admit.

"Ordered, that a copy of the foregoing resolve be transmitted to the commander-in-chief; and that he be directed to continue his remonstrances to Sir Guy Carleton, respecting the permitting negroes belonging to the citizens of these States to leave New York, and to insist on the discontinuance of that measure."

Again, on the 9th of August, 1783, Congress resolved that the Secretary for Foreign Affairs cause to be made out separate lists of the number, names, and *owners of the negroes belonging to citizens of each State,* and *carried away by the British,* in contravention of the treaty, and that he transmit the *said lists to the Executives of the States to which they respectively belong.*

Pursuing these historical illustrations, we find in the British Treaty of 1783, which closed the war of Independence, that provision is made, by the ninth article, against the destruction or carrying away of any negroes.

By a resolve of the 15th April, 1783, the commander-in-chief was instructed to make arrangements with the British commander for receiving possession of the ports held by the British troops in the United States, and for obtaining the delivery of *all negroes* and other property which by the treaty were to be given up.

The old Congress *sanctioned the right of slavery* when they commissioned agents "to obtain the delivery of all negroes and other property of the inhabitants of the United States in the possession of the British forces, or any subjects of, or adherents to, his Britannic Majesty." [See 1 Vol. State Papers, page 221.]

General Washington *demanded restitution of the slaves in the possession of the British forces.* A letter from him dated 7th day of May, 1783, says: "That, in obedience to a resolution of Congress, he had a conference with General Carleton on the subject of delivering up the slaves and other property belonging to the citizens of the United States, in compliance with the articles of the provincial treaty; that he (General Carleton) appeared to evade a compliance with the said treaty by a misconstruction of the same, and permitted a large number of the said slaves to be sent off to Nova Scotia."

The opinions and convictions of General Washington, on this point, were, that the carrying away the negroes, as it was done, was an infraction of the treaty. His correspondence with Congress, and with the British commanders, and his instructions to Mr. Benson, Lieutenant Colonel Smith, and Mr. Parker, the American Commissioners, all go to show that he demanded the restitution of slaves.

Sir Guy Carleton was charged by General Washington with having violated the treaty, in suffering the embarkation of the negroes; and he acknowledged the truth of the charge, by his precautions in ascertaining the number, and thereby gave an evident opinion that restitution should be made for them.

Extract from a letter of General Washington to Sir Guy Carleton:

"ORANGETOWN, *May* 6, 1783.

"I find it my duty to signify my readiness, in conjunction with your excellency, to enter into any agreement, or to take any measures, which may be deemed expedient, to prevent the future carrying away of any negroes, or other property of American inhabitants." [See 3 Vol. Sparks' Writings of Washington.]

In the letter here mentioned, Sir Guy Carleton had requested that Congress would empower some persons to go into New York and superintend the embarkation of persons and property, in fulfilment of the seventh article of the provincial treaty. [Diplomatic Correspondence, Vol. XI., p. 325.]

These Commissioners, appointed by General Washington to superintend the embarkation from New York, and see that no American property was carried away, at the close of the business made report to him of their doings, when they say, "Sir Guy Carleton affected to distinguish between the cases of such negroes as came within the British lines in consequence of the promises of freedom and indemnity, held out in the proclamations of his predecessor."

In a letter of Sir Guy Carleton, of May 12, he admits the violation, and palliates it by saying he had no right to deprive the negroes of that liberty he found them possessed of; that it was unfriendly to suppose that the king's minister could stipulate to be guilty of a notorious breach of faith towards the negro; and that *if it was his intention,* it must be adjusted by compensation, *restoration* being utterly impracticable.

"The negroes in question, I have already said, I found free when I arrived at New York. I had, therefore, no right, as I thought, to prevent their going away to any part of the world they thought proper." [See Sir Guy Carleton's letter, State Papers, vol. ii, p. 5.]

The Commissioners remonstrated with Sir Guy Carleton in regard to his determination "to carry away" the negroes, in violation of the treaty, and in a letter bearing date June 19th, 1783, addressed to General Washington, they say, "we conceive it is now reduced to a certainty, that all applications for *the delivery of the property* will be fruitless, and we shall therefore desist from any further effort."

The American Commissioners were permitted to make a bill of the negroes in the possession of the British at the close of the war, by the British commander; there were resolutions of Congress claiming compensation for the property carried away in contravention of that article in the treaty of peace; during the administration of Lord Carmarthen, the claim for compensation for property carried away was admitted.

In the 7th article it was stipulated that his Britannic Majesty should withdraw his armies, garrisons, and fleets, without carrying away any negroes or other property of the American inhabitants.

The United States contended that the negroes remaining within the British lines after the peace, but who, having been captured or invited by proclamation, had fled to the British during the war, were the property of the inhabitants of the United States, and should be delivered up, in virtue of the stipulation of the treaty of peace. The British Government contended for another construction, and said that negroes captured in war, or who, invited by proclamation, had taken refuge with them during the war, *could not be restored* without a breach of public faith; that the slaves, by coming within the British jurisdiction, were by that fact emancipated. If Great Britain was justified in the maintenance of that principle, that the moment the negroes came within the British jurisdiction all American interest in them ceased, what justification can be offered for the members of the old Congress for passing resolutions demanding the reclamation of slaves as American *property*, when, in fact, they were no longer slaves, but were, to all intents and purposes, *freemen?* The highest legal tribunal of Great Britain, eighty years ago, declared that a slave could exist on the soil of the parent State. [Somersett's case, 20 Howell's State Trials, 70.] Following up and extending this view, the same Government and the colonial authorities have made repeated declarations, "that they never would surrender persons who had taken refuge under the British standard." In the case of Forbes vs. Cochrane, 2 B. & C., 448, which was an action by a British subject against Commander Cochrane for refusing to deliver up fugitive slaves, Holroyd, Justice, declared, in his opinion, that the moment a party gets out of the territory where slavery prevails, and gets under the protection of another power, the right of the master, which is founded on the municipal law of the place only, does not continue. Such is the current of decisions of England with reference to slaves. And yet energetic measures were adopted by the old Congress for the *restoration* of the property.

Mr. John Jay himself, when Secretary for Foreign Affairs, in the year 1786, in a report he then made to Congress on the subject, maintained that the carrying off of those negroes was a violation of the treaty; and said further that he understood from Mr. Adams, then at the Court of London, that the British Minister had no objections to making compensation for them.

Our minister was instructed by Mr. Randolph, Secretary of State under General Washington, to press upon the British Government the necessity of making indemnification for the slaves deported in violation of the provisions of the treaty of 1783. Here is the reply of Governeur Morris, which expressly recognises the principle of indemnity for slave property:

Extract from a despatch of Governeur Morris, Minister to England, to George Washington, President of the United States, dated

London, *April* 7, 1790.

"And here I took occasion to observe to the Duke of Leeds, Minister for Foreign Affairs, that the Southern States, who had been much blamed in this country for obstructing the recovery of British debts, were not liable for all the severity of censure which had been thrown upon them; that these negroes had been taken or seduced away, and the payment for these negroes having been stipulated by treaty, they had formed a reliance on such payment for discharge of debts contracted with the British merchants, both previously and subsequently *to the war.*" [See 1 vol. American State Papers, Foreign Relations, p. 122.]

Private Journal of John Adams.

Extracts from Mr. Adams' Journal, Friday, November 29, 1782.

"Mr. Oswald, Mr. Franklin, Mr. Jay, and Mr. Laurens, met at Mr. Jay's Hotel d'Orleans.

"In the Convention he (Dr. Franklin) complained of the British forces: That he stated the carrying off of *goods* from Boston, Philadelphia, and the Carolinas, Georgia, Virginia, &c.

"Upon this I (Mr. Adams) recounted the history of Gen. Gage's agreement with the inhabitants of Boston. Doctor Franklin mentioned the case of Philadelphia, and the carrying off effects, even his own library. Mr. Jay mentioned several other things, and Mr. Laurens added the *plunder in Carolina of negroes*," &c. &c. [See 2d vol. State Papers, page 73.]

He further remarks, that before the signing of the treaties, "Mr. Laurens said, there ought to be a stipulation that the British troops shall carry off no negroes or other American property. We all agreed. Mr. Oswald consented, and then the *treaties were signed*," &c., &c.

Again: "I was very happy Mr. Laurens come in, although it was the last day of the conference, and wished he could have been sooner. His apprehension, notwithstanding his deplorable affliction under the recent loss of so excellent a son, is as quick, his judgment as sound, and his head as firm as ever. He had an opportunity of examining the whole, and judging and opposing; and the article which he caused to be inserted at the very last, *that no property* should be carried off." [See Mr. Madison's speech on Jay's Treaty, p. 70.]

Mr. Burr's Motion.

Whilst the ratification treaty of 1794, commonly called Jay's Treaty, was under discussion in the Senate, the following proposition was brought forward, which ultimately prevailed:

"Art. 6. That the value of the negroes and other property, carried away contrary to the 7th article of the treaty of 1783, *and the loss and damage sustained by the United States by the detention of the posts*, be paid for by the British Government; the amount to be ascertained by the commissioners who may be appointed to liquidate the claims of the British creditors."

This resolution has for its object further amicable negotiation for *the value of the negroes*. It may be considered as the unanimous opinion of the Senate, that this claim for negroes was not placed by the treaty of 1794 upon a just and satisfactory basis.

It appears from the extracts and the minutes in Mr. Jefferson's "Papers relative to Great Britain," which accompanied General Washington's message to Congress on the 5th of December, 1793, that the American Commissioners at Paris, in 1782, had held up to the British Commissioners general claims for negroes carried away in the course of the war.

Private Journal of Dr. Franklin.

Extract of a letter from Dr. Franklin to Richard Oswald, Esquire:

Passey, *November* 26, 1782.

In this letter Dr. Franklin enclosed to Mr. Oswald the following, to be incorporated in the treaty of peace, stipulating compensation for the deported slaves:

It is agreed that His Britannic Majesty will earnestly recommend it to his Parliament to provide for and make compensation to the merchants and shopkeepers of Boston; their goods and merchandise were seized and taken out of the stores, warehouses, and ships, by order of General Gage, and others of his commanders or officers there; also to the inhabitants of Philadelphia for the goods taken away by the army there, and to make compensation also for tobacco, rice, indigo, *and slaves*, &c. Sugar was carried off by his armies under Generals Arnold, Cornwallis, and others, from the States of Virginia, North Carolina, South Carolina, and Georgia. [See 2d vol. State Papers, p. 75.]

From several seaports, which had been occupied as ports by the British forces, the *American Commissioners represented* to Mr. Oswald, the British Commissioner, that a portion of this country which owed money to Great Britain is in some degree incapacitated from paying their debts by *the loss of the negroes* which had already been taken away; and though he (Mr. Oswald) might be averse to admit the large losses of which the negroes, *previously removed*, form a great part, he might naturally compromise the claim by agreeing that the troops of his nation should depart without carrying away "any negroes or other property of the American inhabitants." Thus we perceive that

in this negotiation it was admitted by Mr. Oswald, the British Commissioner, and so declared by Mr. Adams, Doctor Franklin, and Mr. Jay, *that the slaves were considered as property;* namely, those belonging to the inhabitants within the lines.

CHAPTER III.

Slavery recognised by the Constitution.

The whole nation sanctioned the right of slavery by adopting the Constitution, which provides for an enumeration of slaves in a representation founded thereon, and for the restoration of fugitive slaves to their masters, acknowledging the obligations of State laws, which hold men to labor or service.

That the clause which provides for the delivery of fugitive slaves stands amongst the most unequivocal indications of the wisdom of the framers of the Constitution, will be apparent to every one who will reflect but for a single moment upon the vast comprehensiveness of their labors, and the peculiar circumstances under which they were performed.

Called together by an extraordinary and alarming emergency, and acting under the influence of the excited passions unavoidably incident to a crisis portending anarchy and civil commotion, the Convention were under the necessity of framing the entire structure of a Government perfectly new in its principle, and destined in less than a single century from the period of its organization to extend either its blessings or evils to a more numerous body of human beings than were ever before associated under the auspices of one General Government! When, to this view of the great magnitude and increasing character of the objects and interests submitted to the consideration of the Federal Convention, we superadd the consideration that they consisted of delegates from thirteen independent sovereignties, having discordant interests and conflicting views to harmonize, the great astonishment is, not that they failed to establish a perfect Constitution, but that they organized any system of government whatever. This Constitution was the work of that illustrious body of patriots and statesmen, who seem to have been raised up by Providence at that peculiarly eventful period, to guide by their eminent wisdom and exalted public virtue the councils of that Convention; the result of whose deliberations were to fix the future destinies of this great empire of freedom. They were originally highly gifted by nature and deeply versed in political knowledge. They had been educated in the principles of civil liberty, and well understood the temper and genius of their country, its interests, and the spirit of its institutions. They justly considered that the Government which was then to be framed was to be adapted to an educated and enlightened country, and to be sustained by moral sentiment, and the political virtue and justice of the People.

The pressure of public distress had purified the souls of men—the common dangers of the Revolution had bound the country together as brethren of one family; its sufferings had taught them the value of liberty, the necessity of Union and mutual forbearance with each other, and the preciousness of the inheritance which was to descend to us, their children.

We cannot look back to the history of the times, when the august spectacle was exhibited of the assemblage of a whole people, by their representatives in the Convention, in order to unite thirteen independent sovereignties under one Government, so far as it might be necessary for the purposes of the Union, without being sensible of the great importance which was at that time attached to this provision. The mischief had become so great, so alarming, as not only to impair intercourse between different sections of the country, but to threaten the existence of the articles of the confederation. To guard against the continuance of this state of things was an object of deep interest with all truly wise, as well as the virtuous of this great community, and was one of the important benefits expected from the establishment of the Constitution of the United States.

The Convention, guided by the comprehensive and enlightened views we have mentioned, endowed the Federal Government with powers of the most ample nature, equal to the attainment of all the useful purposes of public authority.

There was no subject agitated in the Convention which created a more intense and deep interest among the slaveholding States than that of providing a certain and secure mode of perpetuating the bondage of slaves within their boundaries. Difficulties of the most perplexing and harrassing character, in reference to fugitive slaves, had occurred previous to the adoption of the Constitution; and it is absurd to suppose that the mem-

bers of the Convention representing the interests of these States did not intend carefully to guard against a recurrence of similar evils; and it seems to me to be a fair inference from the proceedings of the Convention, that they supposed they had done so effectually by the adoption of the clauses in the Constitution above referred to, and that they intended to confer full power upon Congress to regulate the whole matter.

On the 29th of August, 1787, as we learn from the minutes, it was moved and seconded to agree to the following proposition, to be inserted after the 15th article: "If any person bound to service or labor in any of the United States shall escape into another State, he or she shall not be discharged from such service or labor in consequence of any regulation subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor," *which passed unanimously.* The 15th article referred to above was the article providing for the surrender of fugitives from justice, and this suggested the idea that it would be well to provide, also, for the surrender of fugitive slaves. From Mr. Madison's report we learn that the day before, Messrs. Butler and Pinckney, of South Carolina, had informally proposed that fugitive slaves and servants should be delivered up "like criminals." Mr. Wilson, of Pennsylvania: "This would oblige the Executive to do it at the public expense." Mr. Sherman, of Connecticut, "saw no more impropriety in the public seizing and surrendering a slave or servant than a horse." [Madison's Papers, p. 144] The next day the motion was made in form, and, as Mr. Madison says, "agreed to *nem. con.*" Messrs Wilson and Sherman's objections arose from no moral repugnance to the surrender of fugitive slaves, but from the inconvenience they apprehended the State authorities would be subjected to; and Mr. Wilson spoke from experience, as his own State had at that very time a law for surrendering and delivering up fugitive slaves from other States. This agreement was a compromise between the North and South. It was believed that the members of the Convention would not have formed a Constitution, unless it was agreed to surrender fugitive slaves. It was deemed a compact convenient to both South and North.

On entering into this Government, they apprehended that the other States, not knowing the necessities the Southern States were under to hold this species of property, would from motives of humanity and benevolence, be led to vote for a general emancipation; and had they not seen that the Constitution provided against the effect of such a disposition, they never would have adopted it.

It is well known that, when this Constitution was formed, some of the States permitted slavery and the slave trade, and considered them highly essential to their interests; and that some of the States had abolished slavery within their own limits, and from the principles deduced and policy avowed by them, might be presumed to desire to extend such abolition further. It was, therefore, manifestly the intent and object of one party to this compact to establish, extend, and secure, as far as possible, the rights and powers of the owners of slaves within their own limits, and of the other party to limit and restrain them. Under these circumstances, the clause in the Constitution was agreed on and introduced into the Constitution; and as it was well considered, as it was intended to secure peace and harmony, and to fix as precisely as language could do it the limit to which the rights of one party should be carried within the territory of the other, it is to be presumed that they selected terms intended to express their exact and their whole meaning; and it would be a departure from the purpose and spirit of the compact to put any other construction upon it than that to be derived from the plain and natural import of the language used. Besides, this construction of the provisions of the Constitution gives to it a latitude sufficient to afford effectual security to the owners of slaves. The States have a plenary power to make all laws necessary for the regulation of slavery and the rights of the slave owners, whilst the slaves remain within the territorial limits; and it is only when they escape into other States that they require the aid of other States to enable them to regain the dominion of the fugitives. This point is supported by most respectable and unexceptionable authorities. [See Butler vs. Hopper, 1 Wash. C. C. Rep. 499.]

This brings the case to a single point, whether the statute of the United States giving power to seize a slave without a warrant, is constitutional. We must reflect, however, that the compact was made with some States in which it would not occur to the mind to enquire whether slaves were property. It was a serious question, when they came to make the Constitution, what should be done with their slaves. They might have kept aloof from the Constitution. That instrument was a compromise. It was a compact by which all are bound. We are to consider, then, what was the intention of the Constitution. The words of it were used out of delicacy, so as not to offend some in the Convention whose feelings were abhorrent to slavery; but we entered into an agreement that slaves should *be considered as property.* Slavery would still have con-

tinued if no Constitution had been made. [Per. Parker, Ch. J., Commonwealth vs. Griffith, 2 Pickering's Rep., 19.]

These were the considerations which recommended it with greater force. Had the Convention refused to proceed in the incorporation of this provision, what was the alternative which such a refusal presented to the consideration of the Convention? The Convention would have been at an end, after having accomplished all other objects; for if this interest was not arranged, none other would be. The attitude which the Governments held towards each other, was in a certain degree hostile. Injuries had been inflicted by one section of the country, and resentment shown by the other—the one having taken steps in the case of the non-importation law, which was intended to vindicate Southern rights and honor, by being made the means of obtaining a redress of these injuries.

The guaranty of this right of recapture and title of ownership in slaves, upon which the preservation of the institution of slavery depended, which was thereby secured in the slaveholding States, was well stated by Mr. Madison and others in the several Conventions called to consider the Constitution. Speaking in defence of this provision in the Virginia Convention, in reply to Mr. George Mason, who declared "that there was no clause in the Constitution to secure slave property," Mr. Madison said:

"This clause was EXPRESSLY *to enable owners of slaves to reclaim them. This is a better security than any that now exists.* No power is given to the General Government to interpose with respect to property now held by the States." [Elliot's Debates, vol. 2, p. 335-36.]

Governor Randolph held the same language. He said:

"Were it right to mention what passed in the Convention, I might tell you that *the Southern States—even South Carolina herself—considered this property secured by these words.* I believe, whatever we may think here, that there was not a member of the Virginia delegation who had the smallest suspicion of the abolition of slavery." [Ibid, vol. 2, p. 437.]

In the Convention of North Carolina Mr. Iredell spoke as follows:

"In some of the Northern States they have emancipated all their slaves. If any of our slaves go there and remain there a certain time, *they would by the present law be entitled to their freedom,* so that their masters could not get them again. This would be extremely prejudicial to the inhabitants of the Southern States, *and to prevent it this clause is inserted in the Constitution.* Though the word *slave* is not mentioned, this is the meaning of it. The Northern delegates, owing to their particular scruples on the subject of slavery, did not choose the word *slave* to be mentioned." [Ibid, vol. 3, p. 167.]

And in the debate in the Legislature of South Carolina, when the Constitution was assailed on the same ground as in the Conventions of Virginia and North Carolina, Charles Cotesworth Pinckney made this answer:

"*We have obtained* (said he) *a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before.* In short, considering all the circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have made them better if we could, but on the whole I do not think them bad." [Ibid, vol. 3, p. 357.]

Upon this subject the following remarks were made in the Convention of Massachusetts by General Heath:

"I apprehend, (said he,) that it is not in our power to do anything for or against those who are in slavery in the Southern States." Again: "If we ratify the Constitution, shall we be doing anything by our act to hold the blacks in slavery; or shall we become the partakers of every man's sins? Each State is sovereign and independent to a certain degree, and they have a right and will regulate their own internal affairs as to themselves appear proper; and shall we refuse to eat or to drink, or to be united with those who do not think or act just as we do? Surely not." [See Elliot's Debates, vol. 1, p. 124.]

Mr. John Q. Adams, in speaking of the protection extended to the peculiar interests of the South, under this provision of the Constitution, makes the following remarks:

"Protected by the advantage of representation on this floor—protected by the *stipulation in the Constitution for the recovery of fugitive slaves*—protected by the *guarantee in the Constitution* to the owners of this species of property against domestic violence." [See Mr. Adams's speech on the tariff bill, May, 1833.]

Again: "What he said was, that the South possessed a greater protected interest, an interest protected by that instrument." [Mr. Adams held the Constitution in his hand.] *He was for "adhering to the* BARGAIN." He further remarked: "And *but for such a clause, a Southern gentleman who had lost some article of his machinery,* (his slave interest,) could never recover him back from the free States. Such was the protection *extended by the Constitution* to a peculiar interest." [See Mr. Adams's speech in the House of Representatives, February 4, 1833.]

Are the acts of 1793 and 1850 necessary to carry the injunctions of the Constitution into effect? It is true, without a subsequent law, this provision of the Constitution, *to some extent,* would have been inoperative.

The act of 1793 contains a contemporaneous construction of the Constitution in this respect, of great weight, considering who were the authors of that law; and which has since been confirmed by the repeated decisions of the judicial tribunals of the country. The legislative and judicial exposition has been acquiesced in; no attempt has ever been made to abrogate the law upon the ground of its repugnancy to the Constitution. But even before the Constitution was adopted, and whilst it was submitted to public discussion, this interpretation was given to it by its friends, who were anxious to avoid every objection which could render it obnoxious to the South.

By the 2d section of the 4th article, it is provided that "no person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation thereof, be discharged from such labor or service, but shall be delivered up 'on claim of the party to whom such service or labor may be due.'" It declares also, (Art. 6, sec. 2,) "That this Constitution, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, and the judges of every State shall be bound thereby; any thing in the Constitution or laws of any State to the contrary notwithstanding."

Does this clause profess to be preliminary, or to rely on Congressional instrumentality in the consummation of the purposes for which it was designed? Does it pretend, upon the face of it, to be a pact, complete and self-efficient, from the obligations of which the States cannot escape, and to the perfection of which no more was necessary than was already done?

Here is the principle: the fugitive is to be delivered up on claim of his master. But it required a law to regulate the manner in which this principle should be reduced to practice. It was necessary to establish some mode in which the claim should be made, and the fugitive delivered up.

What are the means of enforcing the provision in the Constitution, without legal enactments to carry it into effect? No penalty is fixed for the violation of its injunctions—no forfeiture is imposed by it. As it stands in the Constitution, it is merely powerless and nugatory. The fugitive slave was to be "delivered up." How delivered? How executed? Delivered, if escaping into a State, by an officer of the Federal Government? No such provision. How was the title to the property to be ascertained? No such provision. Neither of these results would follow; and the constitutional declaration, without penalties and further provisions, was a dead letter—a nullity.

The words of this provision of the Constitution meant to be interpreted to enjoin legislation. They necessarily denote future action, as the scope and effect of the article does not give it a present and positive character. This inference, which thus results from the language of the clause of the Constitution, and from a comparison of it with that used in other parts of the same instrument, becomes more certain when we investigate the proceedings of the Convention that formed the Constitution, and of the regard manifested for its incorporation in the organic law of the land.

The Supreme Court, through Chief Justice Marshall, have said, that the nature of a constitution "requires only its great outlines should be marked, its important objects designated, and the minor ingredients which compose these objects be deduced from the objects themselves." "The constitution unavoidably deals in general language;" it does not "*enumerate the means*" by which its provisions shall be carried into operation. [4 Wheat. 407, 8. 1 Wheat. 326. Baldwin's Constitutional Views, 99, 100, 102.] So also the Constitution of the United States contained only the important objects and great outlines of the Government. All the details of legislation were left to that department of the Government to whom that duty appropriately belonged.

The Constitution does not stop at a mere enunciation of the right of the owner to seize his absconding or fugitive slave in the State to which he may have fled. If it had done so, it would have left the owner of the slave, in many cases, wholly without any adequate redress. The Constitution declares that the fugitive slave shall be delivered up on claim of the party to whom service or labor may be due. It is exceedingly diffi-

cult, if not impracticable, to read this language, and not feel that it contemplated some further remedial redress than that which might be administered at the hand of the owner himself. It cannot be well doubted, that the Constitution requires the delivery of the fugitive "on the claim of the master;" and the natural inference certainly is, that the National Government is clothed with the appropriate authority and functions to enforce it.

In the case of Prigg *vs.* Commonwealth of Pennsylvania, (16 Peters, 624,) the provision of the Constitution as to the surrender of fugitives from service was under consideration. Story, J., in delivering the opinion of the court, speaking of that clause which enacts that the fugitive shall be delivered up on claim of the party to whom such service may be due, says: "We think it exceedingly difficult, if not impracticable, to read this language, and not to feel that it contemplated some further remedial redress than that which might be administered at the hands of the owner himself. * * They required the aid of legislation to protect *the right, to enforce* the delivery, and to recover the subsequent possession of the slave." And the court, in this case, declares that the Constitution does execute itself, so far as to establish the absolute right of the owner to recapture his slave.

Upon all principles of legal construction and propriety, the construction of this provision in the Constitution looks to future acts of the legislature, and not to immediate effect. It shows that legislative provisions were anticipated. The purpose was to impose and enjoin on the States, to which slaves might escape, to deliver them up to claimants legally authorized to receive them. The policy was thus solemnly settled; and can it be supposed that the carrying out that policy would have been left in the imperfect situation, as to its enforcement, in which the adoption of the Constitution placed it? The act of 1793, in the opinion of Congress, was required to carry this provision of the Constitution in force.

The Constitution contains two different kinds of provisions: the one may be designated self-executed, or capable of self-execution; the other, only executory, and requiring legislative enactment to give them operation. Thus, the 2d section of the 4th article, which declares that "citizens of each State shall be entitled to all privileges and immunities of citizens of the several States;" the 10th section of the first article, which prohibits any State from making any thing but gold and silver coin a tender in payment of debts; from passing any law impairing the obligation of contracts; are all examples of the self-executed provisions of the Constitution—by which we mean to say, that the Constitution, in these instances, is, *per se*, operative, without the aid of legislation. On the contrary, the various provisions of the 8th section of the same article, such, for example, as "the power to establish an uniform system of naturalization, and uniform laws on the subject of bankruptcy," are executory only; that is, without an act of legislation, they have no operative effect.

This case, then, arising under the Constitution, is one which arises under its executory provisions. In the case of Prigg *vs.* Pennsylvania, the Supreme Court of the United States held that the Constitution, so far as the process and removal of the fugitive, and seizure, executes itself, without statutory regulation.

Let any one turn his eye back to the time when this grant was made, and say if the situation of the people admitted of an abandonment of a power so important to every Southern State; so universally sustained in its reasonable exercise by the opinion and practice of the people; and so vitally interesting to a people, whose whole property consisted of this species of population?

It may with confidence be affirmed, that when the Constitution was adopted, had it then been imagined that this question would ever have been made, or that the exercise of this power of regulating the recapture of fugitive slaves would ever have depended upon the views of the different tribunals of the States, the effort to form a system of Government, would have been a total failure.

Before the adoption of the Constitution, the States were, to a certain extent, sovereign and independent, and were in a condition to settle the terms upon which they would form a more perfect Union. It has been contended by some over-zealous philanthropists, that such an article in the Constitution would be of no binding force or validity, because it was a stipulation contrary to natural right But it is difficult to perceive the force of this objection. It has already been shown that slavery is not contrary to the laws of nations. It would then be the proper subject of treaties among sovereign and independent powers. Suppose, instead of forming the present Constitution, the several States had become in all respects sovereign and independent, would it not have been competent for them to stipulate by treaty that fugitive slaves should be mutually restored, and to frame suitable regulations, under which such a stipulation should be carried into effect? Such a stipulation would be highly important and necessary to secure harmony

between adjoining nations, and to prevent perpetual collisions and border wars. Now, the Constitution of the United States partakes both of the nature of a treaty and of a form of Government. It regards the States, to a certain extent, as sovereign and independent communities, with full power to make their own laws, and regulate their own domestic policy, and fixes the terms upon which their own intercourse may be regulated and controlled.

Pursuant to this provision of the Constitution, the act of Congress of the 12th of February, 1793, was passed, not to restore the rights of the master, but to give him the aid of a law to enforce them. This act empowers the person to whom a fugitive from labor or service is due, his agent or attorney, to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing within the State, or before any magistrate of a county, city, &c., where such seizure was made, and on proof of owing service to the claimant, *either by affidavit, or other evidence*, taken before a judge or magistrate of the State from which the fugitive escaped, the judge or magistrate of the State in which he or she is arrested shall give a certificate thereof to the claimant, his agent or attorney, which shall be a sufficient warrant for removing such fugitive. [See 1 Baldwin's Reports, 87; 5 Serg. & Rawle, 63.]

The act proves that the framers of the Constitution did not understand the provision in the Constitution as effective until the Legislature should act upon it; that it imposed a duty upon the Legislature to act.

The power of enacting the provisions of the act of 1793 is given to Congress in general terms, without restriction or qualification; and upon every just principle of construction, must be understood to confer whatever authority is necessary for carrying the power into effect, and every authority which, in practice, had become incident to the principal power, and was deemed to make a part of it.

The incident of this power being quite as important as the power itself, the power being worse than worthless without it, did the people of the United States, in forming the constitution of government for themselves, intend to destroy the power, by stripping it of the incidents that gave it all its value? Did they mean to prevent its application to the cases to which they had themselves applied it? and for what purpose? Better, far better would it have been that no power at all should have been granted to Congress, than that they should thus be required either blindly to submit or sullenly to reject. The design of the Constitution was not to abridge, but to enlarge and strengthen the powers of the Federal Government, and it would be strangely inconsistent with the general plan to suppose that, in a matter which is properly a matter of national concern, it has denied to Congress a portion of power which has been actually and beneficially exercised under the Confederation.

With regard to the universal understanding of the people on this subject there cannot be two opinions. If contemporaneous exposition and the clear understanding of the legislative power could be resorted to as the means of expounding an instrument, the continuous and unimpaired existence of this power in Congress ought never to have been controverted; nor was it controverted until very recently, or until a state of things required the enactment of a law containing more stringent provisions than the act of 1793. Previously to the passage of the act of 1850, Congress remained in the peaceable exercise of this power, under circumstances entitled to great consideration. In every State in the Union was the adoption of the Constitution resisted by men of the keenest and most comprehensive minds; and if an argument, such as this, so calculated to fasten on the minds of a people jealous of State rights and deeply interested in the operations of the Government, could have been imagined, it never would have escaped them. Yet no where does it appear to have been thought of; and, after adopting the Constitution in every part of the Union, we find the framers of it every where among the leading men in public life, and legislating and adjudicating under the most solemn oath to maintain the Constitution of the United States, yet no where imagining that, by the exercise of this power, they violated their oaths or transcended their rights.

This being the construction given to the Constitution immediately after its adoption, and which has been acted upon without opposition, and acquiesced in for more than fifty-five years, it was not to have been expected that its correctness would, at this late period, have been drawn in question.

It must be recollected that this contemporaneous construction of the Constitution was made by those who had the best possible means of knowing what was its true intent. Many of the distinguished members of the Convention which formed the Constitution were, in 1793, in the National Councils.

The Congress of the United States, when required to *act affirmatively*, cannot disregard a mandate of the Constitution. The supremacy of the Constitution is the great

cardinal principle of American liberty, from which there is no appeal but to force; and to subvert its principles, or disregard its mandates, is anarchical and revolutionary.

In truth, if there be any thing in our legislative history which is entitled to our affection for the motives in which it originated; to our veneration for the authority by which it was supported; to our respect for the principles introduced in it, it is the act of 1793. But the charge of usurpation is in every sense inapplicable, for the efficacy of the act arises from the assent of the States now complaining of the adoption of the measures

It was a custom among the ancients, when their religion was in danger, to bring the Godhead itself from the shrine. When our Constitution is threatened with subversion, can it be deemed irreverent to call upon the stage the patriotic individuals who sustained this law?

It passed in the Senate unanimously, Friday, January 18, 1793. [*Senate Journal, vol.* 1, *p.* 472] Of the Senators of that day were John Langdon, of New Hampshire; Geo. Cabot, of Massachusetts; Oliver Ellsworth and Roger Sherman, of Connecticut; Rufus King, of New York; and Robert Morris, of Pennsylvania.

The act of 1793 was supported by Chief Justice Ellsworth, distinguished at the bar and on the bench as a statesman and a jurist; who repeatedly served with distinction in the Legislature of his State, and was a member of the Convention which formed the Constitution. He was not only a member of the Convention, but he witnessed all that transpired in that Convention; he participated in the debate upon the question, and observed all the modifications of the provisions of the act through which it underwent in that illustrious body of patriots who gave birth to the Constitution.

The Fugitive Slave Bill of 1792 was drafted by George Cabot, of Massachusetts, in November, and it was passed by the Senate on the 18th of January, unanimously, fourteen members from free and thirteen from slave States voting for it. The House committee, Theodore Sedgwick and Shearjashub Bourne, of Massachusetts, and Alexander White, of Virginia, reported the bill to that body, by which it was passed, on the 4th of February, without discussion. Eight free States were represented by 31 votes, six slave States by 24 votes; free State majority 7. The bill received 48 yeas to 7 nays. Massachusetts gave 6 yeas to 1 nay. This record shows that *the free States passed the first fugitive slave bill.*

That was not a time for stretching the Federal power. The greatest jealousy prevailed, and the friends of the Constitution were obliged to observe the utmost caution while it was winning its way to public favor—refuting the suggestions of its enemies, and recommending it to its friends.

The act of 1793 was approved by George Washington and his Cabinet. On the talents and virtues which adorned the Cabinet of that day—on the patient fortitude with which it resisted the intemperate violence with which it was assailed—on the firmness with which it maintained those principles which its sense of duty prescribed—on the wisdom of the rules it adopted—no panegyric can be pronounced in which the best judgment of the nation will not concur.

The law of Congress was passed in the year 1793, the second session after the adoption of the Constitution; it was proposed, debated, and digested by a body of men, the chief and prominent characters of whom were themselves the erectors of our National Government It has been acceded to and acted under by every State in the Union; it has never been instrumental to any signal grievance, or complained of as a public evil; it has on the contrary been resorted to as a useful and salutary regulation. In the House of Representatives the vote on its passage was yeas 48, nays 7—in the proportion almost of seven to one. Here is the list as it stands upon the record:

YEAS—Fisher Ames, Mass., John Baptiste Ashe, N. C., Abraham Baldwin, Ga., Robert Barnwell, S. C., Egbert Benson, N. Y., Elias Boudinot, N. J., Shearjashub Bourne, Mass., Benjamin Bourn, R. I., Abraham Clark, N. J., Jonathan Dayton, N. J., William Findley, Pa., Thomas Fitzsimmons, Pa., Elbridge Gerry, Mass., Nicholas Gilman, N. H., Benjamin Goodhue, Mass., James Gordon, Pa., Christopher Greenup, Ky., Andrew Gregg, Pa., Samuel Griffin, Va., William Barry Grove, N. C., Thomas Hartley, Pa., James Hillhouse, Ct., William Hindman, Md., Daniel Huger, S. C., Israel Jacobs, Pa., Philip Key, Md., Aaron Mitchell, N. J., Amasa Learned, Ct., Richard Bland Lee, Va., George Leonard, Mass., Nathaniel Macon, N. C., Andrew Moore, Va., Frederick Augustus Muhlenberg, Pa., William Vans Murray, Md., Alexander D. Orr, Ky., John Page, Va., Cornelius Schoonmaker, N. Y., Theodore Sedgwick, Mass., Peter Silvester, N. Y., Israel Smith, Vt., William Smith, S. C., John Steele, N. C., Thomas

Sumpter, S. C., Thomas Tudor Tucker, S. C., Jeremiah Wadsworth, Ct., Alexander White, Va., Hugh Williamson, N. C., Francis Willis, Ga.

NAYS—Samuel Livermore, N. H., John Francis Mercer, Md., Nathaniel Niles, Vt., Josiah Parker, Va., Jonathan Sturges, Ct., George Thatcher, Mass., Thomas Tredwell, N. Y. [House Journal, vol. 1, p. 690.]

An analysis of this vote, according to geographical divisions, shows that from the Northern States there were twenty six votes in favor of the bill, and five against it; and that from the Southern States there were twenty two votes for and two against it. And of those who voted in the affirmative, five—Baldwin and Williamson, of Georgia, Dayton, of New Jersey, Fitzsimmons, of Pennsylvania, and Gilman, of New Hampshire—were members of the Federal Convention; and two, Clark, of New Jersey, and Gerry, of Massachusetts—signers of the Declaration of Independence.

CHAPTER IV.

Objections to the Act of 1850 *Reviewed.*

Among the many objections against the fugitive law of 1850, it has been urged that there was nothing which called for its enactment; that it was, therefore, a wanton encroachment upon the feelings and prejudices of the North This is urged by many who are opposed to complying with the requirements of the Constitution, and who honestly suppose that the law of 1793 was amply sufficient to enforce the rights of the Southern claimants as guarantied in that instrument. But such every intelligent man knows is not the fact Under the laws which had been enacted by several States, aided by the prejudices of the people against slavery, it was next to an impossibility to recover a fugitive; and thus, while the North and East insisted that there should be no nullification at the South, but that those south of Mason and Dixon's line should abide by the Constitution, it was claimed that at the North those who chose might act in defiance to it, and the laws passed under it in relation to fugitive slaves. But when we look at the facts, at the legislative action of several of the non slaveholding States, can we say, that in justice to the South and to the constitutional obligations, there was no reason why there should not be made further provisions for complying with the requirements of that instrument. The following is an act of the Massachusetts Legislature:

"SEC. 1. No Judge of any Court of Record of this Commonwealth, and no Justice of the Peace shall hereafter take cognizance or grant a certificate in causes that may arise under the third section of an act of Congress, passed February 12th, 1793, and entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters,' to any other person as a fugitive slave within the jurisdiction of this Commonwealth.

"SEC. 2. No Sheriff, Deputy Sheriff, Coroner, Constable, Jailor, or other officer of this Commonwealth, shall hereafter arrest or detain, or aid in the arrest and detention or imprisonment, in any jail or any other building belonging to this Commonwealth, or to any county, city, or town thereof, of any person for the reason that he is claimed as a fugitive slave.

"SEC. 3. Any Justice of the Peace, Sheriff, Deputy Sheriff, Coroner, Constable, or Jailer, who shall offend against the provisions of this law, by in any way acting directly under the power conferred by the third section of the act of Congress, aforementioned, shall forfeit a sum not exceeding one thousand dollars for every such offence to the use of the county where said offence is committed, or shall be subject to imprisonment not exceeding one year in the county jail."—*Approved by the Governor, Marcus Morton, March* 24, 1818.

This law was copied by the Legislature of Rhode Island, and remains to this day on her statute book; and one analagous in its provisions had been passed by the Legislature of Pennsylvania in 1847. In the State of New York a similar one is in existence, but has been pronounced by the Supreme Court of the State to be unconstitutional. The arrest and detention of fugitive slaves, by State authority, is prohibited in Connecticut. [See act of 1844, Revised Statutes of Connecticut, p. 585.] It was the system of laws like these, and of a disposition on the part of a portion of the community at the North

to obstruct and hinder the execution of the law of 1793, that demanded the enactment of the act of 1850.

These unauthorized assumptions of power by the non-slaveholding States practically destroyed the right of the South to reclaim their property. This right must otherwise have proved ineffectual without the act of 1850. These assumptions of power nullified a clear admitted right, which right carries with it the most cogent and persuasive appeal to the conscience, the equity, and good will of Northern legislators, and fenced in as it is by all the most sacred and inviolable sanctions of the faith and honor of the Federal Government—a right which the South claim to exercise, impelled equally by every moral motive and duty, and by the most consummate of constitutional obligations—all this would be reduced by the legislation of some of the States to a naked, theoretical, outstanding, and litigated right, stripped of all its original sanctions, both legal and moral, and to be contested with an adversary above the law ; and in no circumstances disposed to discuss questions of positive right and justice, or to perform the requirements of the Constitution.

The obligation on the part of the non-slaveholding States to afford adequate protection to the Southern claimant in reclaiming his property, is no doubt of the highest and most sacred kind; and there is a duty equally strong upon the people of those States to avoid giving offence, by any irregular and improper conduct, and upon the local government's sincerity to punish and repress instances of such conduct. If these misguided individuals can with impunity thwart all the measures of the Federal Government for restoring property; if they can with impunity commit outrages upon the rights of slaveholders, and in violation of the provisions of the Constitution; can it be surprising if, under such circumstances, strong measures should be adopted to enforce rights and obligations which grow out of these rights, and are guarantied by the Constitution.

The act of 1850 is auxiliary to the Constitution. It does not deal with principles which the Constitution does not bear in its bosom. It contains subsidiary clauses, dependant provisions, flowing as corollaries from the Constitution.

In saying that the law of 1850 is just such a law as that of 1793, we mean that it is identical so far as it respects its object, the reclamation and giving up fugitive slaves. It acts simply as the echo of the act of 793. "*Ingeminat voces, auditaque verba reportat.*" It may with some propriety be called the twin brother of the act of 1793; its duplicate, its reflected portrait, for it re enacts with a tried fidelity, all that the act of 1793 stipulales.

It is provided by the act of 1793 that the certificate for the delivery and removal of the fugitives to the State or Territory from which they had fled should be given upon satisfactory proof that the person arrested owed service to the claimant, by a judge of the circuit or district court of the United States, or by a State magistrate, before whom the fugitive was, of course, in such cases to be taken.

The sixth section of the act of 1850 operates to the same extent, and no further ; except in this, that, in addition to the judges, it authorizes commissioners, appointed by the circuit courts of the United States and by the supreme court in the Territories, to grant the certificate of delivery and removal.

The fourth section of the act of 1793 subjected any person who should hinder or obstruct the seizure or arrest of a fugitive slave, or rescue the fugitive after arrest, or harbor or conceal such fugitive, "after notice that he or she was a fugitive from labor," to a fine of five hundred dollars, to be recovered for the benefit of the claimant, in any court of competent jurisdiction.

The seventh section of the act of 1850 contains the same provisions, with this difference, that persons guilty of any of the offences named in the act of 1793 are liable to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, besides forfeiting and paying, as civil damages, one thousand dollars, to the party injured by their illegal conduct, to be recovered in the manner prescribed by the 4th section of the act of 1793. Such penalties, all good citizens must admit, are no more than should be visited upon those who, whatever the pretext, undertake to resist the laws of the Union

The difference between the two acts consists in this only : That the act of 1850, by its fifth section, makes the United States marshals liable to claimants for the escape of fugitives to the full value of their services or labor, and to a fine also of one thousand dollars, to the use of the claimant, in case they refuse or neglect to execute the warrant or other process; and commands them, by its ninth section, where the claimant, after the issue of the certificate, makes an affidavit that he has reason to apprehend that the fugitive will be rescued from his possession by force before he can convey him beyond the

limits of the State where the arrest was made, "to retain the fugitive in custody, remove him to the State whence he fled, and there deliver him to the claimant, his agent, or attorney."

Judge Grier, of the United States Supreme Court, says: "The chief difference between the fugitive act of 1850 and 1793, is that the former law allows a warrant to be issued by a Judge and the arrest to be made by a public officer, and imposes more *stringent penalties* on those who interfere by violence to prevent the execution of legal process. Those who believe that the Constitution and laws should be regarded and obeyed, have no ground of complaint, and those who do not, will continue to rant at both as usual." One of the present objections to the law of 1850, one that has been most frequently urged, that constitutes a prominent part of the inflammatory speeches, and the abolitionists appear to rely upon more than any other for its popular effect, is, that it makes no provision for a jury trial. But it is well known that with respect to this it is expressly like the law of 1793, of which, we believe, they never complained; with respect to the *habeas corpus*, there is no difference.

The decision of the Supreme Court settles the constitutionality of the act of 1850, as the principal features of this act are precisely analogous to the provisions of the act of 1793. The decisions of the circuit courts sustain, also, the whole current of adjudication in relation to this question.

"In the case of Hill *vs.* Lowe, which was tried in Pennsylvania, [Wash. Rep., vol. 4, 327,] it was decided that if a person knowingly obstructs the owner or his agent in seizing a fugitive slave, he cannot escape the penalty provided in such case by the act of 1793, upon the ground of the ignorance of the law, or of an honest belief that the party arrested was not a fugitive from service or labor." [See, also, Jones *vs.* Vanzandt, 2 McLane's Reports, 596. Howard's Reports, vol. 5, 215. Johnson *vs.* Thompkins, 1 Baldwin's Reports, 571. See, also, Prigg *vs.* Commonwealth of Pennsylvania, 16 Peters.]

In the opinion of Congress, this power of arrest and all its consequents and appendages as sanctioned by the Constitution, had not been in operation until the passage of the act of 1793.

The third section of the act of 1793 [U. S. Stat. at Large, vol 1, p. 302,] authorized owners to seize their slaves in any State or Territory in which they might find them. In virtue of this slaves might be taken even without a warrant; and it was no offence against the laws of a State for the owners or their agents to convey them back to the State whence they absconded. [Baldwin's C. C. Rep, p. 577-'79] Still, this power was, from the very difficulty of its exercise, nugatory, unless aided by positive law.

Another objection is, that the act of 1850 suspends the writ of *habeas corpus.*

Of all the misrepresentations which abolitionism and nullification have relied on to throw odium upon the law in question, and to encourage resistance to its execution, none have been pressed with more pertinacity than the position that the act of 1850 virtually suspended the writ of *habeas corpus.* How successful this pretence was, and how much the efforts to disseminate such an impression have done towards exciting a feeling of opposition not only to the act itself, but to the compact which made it necessary, it is impossible to say. But it is fair to presume, that in the absence of any case where the writ has been offered in arrest of proceedings, and of course of any practical judicial construction on this point, the fanatics may have partially succeeded in exciting a feeling akin to that of resistance to the laws of the land.

The Constitution declares that "the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion or invasion, the public safety demand it." With this limitation Congress can pass no law which could suspend it, for such a law the courts would not sustain, and of course the right would not be thereby infringed or taken away. The act of 1850 does neither; it leaves the writ to be granted in the discretion of any judge or court having the power to award it The truth is, there seems to be either a singular degree of ignorance or a wilful misconception of the nature and definition of the writ of *habeas corpus.* It will discharge no one held in custody under due process of law. It is a high prerogative writ, which operates merely to release whoever is *illegally* restrained of his liberty [2 Kent's Com. p. 32] But let us look to the decisions of the courts in the free States in cases similar to such as may arise under the fugitive slave law for its true exposition.

In the case of Randall *vs.* Bridge, and also of the Commonwealth *vs.* Brickett, decided in the Supreme Court of Massachusetts, the doctrine of the law was stated as follows:

"The intention of the writ of *habeas corpus* is to relieve from *unlawful* imprisonment, and *not* to alter the law authorizing commitments."—[2 Mass. Reports, 549-553, 8 Pick. 138.]

Again, in Riley's case, and in the case of the Commonwealth *vs.* Whitney, it was settled that convicts, or those under execution by any process, civil or criminal, are not entitled to the benefit of the writ.—[2 Pick. 172; 10, p. 434.]

Among the decisions of the New York courts there are two reported which illustrate precisely what would be the result of a writ of *habeas corpus* in the case of a person under arrest as a fugitive from justice or from labor. One is Clark's case, in which the Court of Error and Appeals of that State decided that—

"Where a person is brought on *habeas corpus* before a court or judge as a fugitive from justice, by a warrant of the Executive of one State, on the requisition of the Executive of another State, the court or judge *will not inquire into the probable guilt of the accused.* The only inquiry is whether the warrant under which he has been arrested states that he has been demanded by the Executive of the State from which he is alleged to have fled, and that a copy of the indictment or affidavit charging him with having committed 'treason, felony, or other crime,' certified as authentic by the Executive demanding him, has been presented." [9 Wend. 212.]

The other is the case of a negro named Jack, arrested as a fugitive slave. In that case the court said:

"In the case of a slave who has absconded from another State, the certificate of the judge who heard the case on a writ of *habeas corpus*, delivered to the owner, is conclusive, and a writ *de homine replegiando* will NOT LIE TO TRY THE SLAVE'S RIGHT TO FREEDOM." [12 Wend. 311. Same doctrine, Wright *vs.* Deacon, 5 Serg. & Rawle, Penn. Rep. 62.]

Again: the opponents of the fugitive slave law lay great stress upon the fact that there is no right of appeal from the decision of the Commissioners, and no trial by jury. The very nature of the right which the Constitution has secured to the owners of slaves in the reclamation of their property contemplates summary proceedings in its enforcement Judge Story, in his Commentaries on the Constitution, thus disposes of this question:

"It is obvious that the proceedings for the delivery and removal of fugitives of both classes *contemplate summary ministerial proceedings, and* NOT *the ordinary course of judicial investigation*, to ascertain whether the complaint be well founded, or the claim to ownership be established beyond all legal controversy. In case of suspected crimes, the guilt or innocence of the party is to be made out at his trial, and *not* upon the preliminary inquiry whether the party shall be delivered up. All that would seem in such cases to be necessary is that there should be *prima facie* evidence before the executive authority to satisfy its judgment that there is probable cause to believe the party guilty—such as upon an ordinary warrant would justify his commitment for trial. And in the case of fugitive slaves there would seem to be the same necessity of requiring only *prima facie* evidence of ownership, without putting the party to a formal assertion of his rights by a suit at the common law." [Vol. iii, p. 675.]

No person can claim a right to take them and carry them away into slavery, but those who can prove them to be slaves—who can prove it by such evidence as ought alone to be held sufficient in a question of freedom or slavery This view of the case settles the question of the burden of proofs. He who would seek to disturb the apparently rightful condition of things, assumes the burden of proving his own right. The *onus probandi* is thrown upon the claimant to prove his property, and his right to restitution

Now, in the case of fugitives from justice demanded by the Executive of one State of the Executive of another, every one knows the proceedings are always summary and *ex parte.* There is no right of appeal and no trial by jury; and, if the requisition conform in all respects to the law, the *only* question to be determined upon the arrest is the question of identity; and, for example, under the treaty of Washington, between the United States and Great Britain, of August 9, 1842, persons suspected of crimes are to be delivered up in the same manner, upon the same proof, and no more, to British authority for trial. These proceedings have caused no complaint, neither have they created any alarm for the personal liberty of free white citizens of the Union. How, then, is it that all this sympathy is aroused in the case of a negro who has escaped from his master, and to whom the Constitution declares he "shall be delivered up?"

If any person be wrongfully arrested, it is very easy to try the question of freedom or slavery by the verdict of a jury in the State whence it is alleged he was a fugitive from labor. They have always had a fair and impartial trial. It has been decided by the Court of Appeals of Maryland, that if a negro slave, with the permission of his owner, takes up his residence in another State, whether free or slave State, and returns to Maryland, the owner cannot resume his property in him, either for the purpose of servitude within the State or of sale to a citizen of the State. [Bland vs. Dowling, 9 Gill & Johns. 19.]

In Virginia, in the case of Betty vs Horton, [5 Leigh Rep. 615,] the Court of Appeals of that State decided that where a citizen of Massachusetts came to Virginia, and was there married, and acquired two female slaves by the marriage, who were taken with him on his return to Massachusetts, and there remained while he was domiciled in that State, by returning to Virginia and bringing the slaves with him, they were entitled to their freedom under the non-importation act of 1792. [See also Pleasant's case; 10 Leigh, 697, for same doctrine] It was also decided in that case that, as it appeared that the two slaves were, under the Constitution of that State, free persons in Massachusetts, they were on that ground entitled to their freedom in Virginia. In Louisiana the Supreme Court has decided, in the case of Lumsford vs Coquillon, that if the owner of a slave remove him from Kentucky to Ohio, with the intention of residing there, the slave becomes *ipso facto* free.

The regard for liberty exhibited by the Courts of Justice is not confined to the non-slaveholding States. It is found in full vigor and energy in all of the Southern States. Let us examine a few more of the cases as adjudicated by the tribunals of the Southern States A female slave was carried by her mistress from Louisiana to France. When the latter returned to Louisiana she brought the girl back, as she supposed, to her former condition of slavery; but the Supreme Court, in a suit brought by the girl to establish her freedom, decided that "the fact of a slave being taken by the owner to the kingdom of France, or any other country where slavery or involuntary servitude is not tolerated, operates on the condition of the slave, and produces *immediate emancipation.*" This is the case of Marie Louise vs. Marot, 9 Curry's Louis. Rep. 473.

What renders this decision more remarkable is that Lord Stowell (then Sir William Scott) decided the other way. In the case of a slave who was brought from the West Indies to England, and afterwards carried back by her master, the learned Judge decided that she was reinstated in her condition of slavery. This case was cited to the Judges of Louisiana, but they disregarded it. No Court of any free State could have taken more liberal views of the law than those slaveholding Judges did. In Missouri it is the same The owner of a slave carried her to Illinois, and there hired out for a few days, and brought her back to Missouri. The slave sued for her freedom and recovered it. [3 Miss. Rep 270] In Virginia it is settled that *the same strictness as to forms is not required in an action for freedom* as in other cases. [Randolph Rep. 134.] Do these facts justify the allegation that a free black would stand no chance before a Southern jury?

In the case of negro David vs. Porter, [4 Harris & McHenry, Rep. 418,] the owner hired the negro to a citizen of Pennsylvania. The negro afterwards returned to Maryland into the possession of the claimant; and on petition the General Court decided that the hiring into Pennsylvania entitled the negro to his freedom.

CHAPTER V.

Mode of surrendering Fugitives from Labor.

As the Legislatures of several of the States had assumed the power of enacting laws, prohibiting all State officers, under heavy penalties, from aiding in the reclamation of fugitive slaves, it becomes the duty of Congress, with a view of carrying into execution the solemn injunctions of the Constitution, to invest the power in the hands of its own officers, by the appointment of Commissioners to adjudicate the rights of claimants to their slaves. And the State Courts have no jurisdiction under the act of Congress on that subject.—[Per Coulter, 10 Barr, 514; Commonwealth of Pennsylvania vs Prigg, 16 Peters.]

It is contended that to clothe the United States Commissioners with concurrent jurisdiction with the judges of the circuit and district courts, in matters pertaining to fugitives

from labor, is violative of the Constitution. This point is easily dismissed. The Supreme Court is the only court known to the Constitution. The circuit and district courts are the mere creatures of law, and their jurisdiction and powers depend upon the will of the National Legislature. They are the "inferior tribunals" contemplated by the Constitution Now, Congress possesses the power undoubtedly to provide for the recapture and delivery of fugitive slaves to their owners. It may, therefore, prescribe the mode in which and extent to which the power shall be applied, and how and under what circumstances the proceedings shall afford a complete protection and guaranty of the right which the Constitution has secured. [Prigg *vs.* Commonwealth of Pennsylvania, 16 Peters, 539.] This has been done by Congress in conferring special powers on the commissioners acting under the fugitive slave law. The object of enlarging their powers—for they already had the power "to take acknowledgment of bail and affidavit," both in civil and criminal causes, and exercised "all the powers that any justice of the peace or other magistrate of any of the United States exercise in respect to offenders for any crime or offence against the United States"—was "to afford reasonable facilities to reclaim fugitives from labor." [See vol. 2, p. 679, vol. 3, p. 350, vol. 5, p. 516, U. S. Statutes at Large.]

The creation of this tribunal is made a ground of serious objection to the constitutional validity of the act of 1850. It is contended that the State tribunals should be allowed to settle all conflicting rights between the claimant and the slave. This cannot be done. It is believed that a measure of State legislation, withdrawing the whole subject matter from the action of the tribunal created by Congress, and investing the State judiciary with the jurisdiction, would be an unauthorized assumption of power, because it would attempt to regulate the proceedings of the judicial tribunals of the United States. It is a well settled principle, that Congress cannot confer a part of the judicial power of the United States on States, magistrates, or officers. In the language of the Supreme Court of the United States, [1 Wheaton, 304,] Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself, and by a well settled construction; in order to give courts and magistrates this character, the persons filling the stations respectively, must be appointed and commissioned by the Government of the United States under a previous act of Congress. This doctrine was maintained in the celebrated case of Martin and Hunter's Lessee, [1 Wheat., 304,] and has not only been recognised in the Supreme Courts of the United States, but by repeated decisions of the highest tribunals of various States.

We refer to a few of the cases in the State courts; and first, to the Commonwealth vs Feely, Virginia Cases, 321. This was an indictment for robbing the mail, under an act of Congress which gave, in express terms, jurisdiction to the State courts But the Court of Errors in Virginia decided that they could not, under the Constitution, exercise it; and the whole court entered the following judgment: "The Court doth unanimously decide that, as the offence described in the indictment in this case is *created by an act of Congress*, the said Superior Court, *being a State court*, hath no jurisdiction thereof." There is a case, similar in principle, in Hall's Law Journal, 113, United States vs. Campbell. See also the opinion of Judge Cheves, of South Carolina, 12 Niles' Register, 266, *in ex parte Rhodes.*

The same question came before the Supreme Court of New York, in United States *vs.* Lathrop, 17 Johns. 4. This was an action of debt, brought to recover a penalty of $150, under the act of Congress passed August 2, 1813, for selling spirituous liquors by retail, contrary to the provisions of that act, which, in terms, authorized the State courts to take jurisdiction of offences committed under it. The court decided that Congress could not invest them with such jurisdiction, and they dismissed the case.

The case of Ely *vs* Peck, [7 Connecticut Rep. 239,] was an action brought on a *statute law of the United States*, to recover damages, which the plaintiff, as owner of a schooner, had sustained by the dereliction of the defendant. This act, also, in terms, conferred jurisdiction of the subject upon the State courts; but the Supreme Court of Connecticut declined to act under it, holding that Congress cannot vest any portion of the judicial power of the United States, except in a court ordained and established by itself, and that the "State courts are not ordained and established by Congress, and are not amenable to that body."

For the further discussion of these questions, we refer to Houston *vs.* Moore, 5 Wheat. 35; 3 Story's Com. 622–625; Sargent's Views of Constitutional Law, ch. 27, 8; 1 Kent's Com. 395, 405; United States *vs.* Bailey, 9 Peters, 328.

No principle is better settled, or more reasonable in itself, than that no State legislature can, in any manner, invest or interfere with the process of the courts of the United States, or prescribe forms of proceeding under the laws of Congress. Wagman *vs.* Southard, 10 Wheat. 1; Bank of the U. S. *vs.* Halsted, ibid, 51; United States *vs.* Wilson, 3 Wheat. Rep. 253; 3 Story's Com. 624, 5; 1 Kent's Com 391; Bean et al. *vs.* Haughton, 9 Peters, 329.

Where the law of Congress directs an officer to act, he must act according to law on all matters where his duty is prescribed, so as to restrain his discretion. The commissioner declares whether the claimant comes within the law, on the evidence adduced before him. The duty is positive, by the command of the law, which no State authority can supersede, or grant a dispensation from its performance. The essence of this proceeding is in the promptitude of the remedy; it is devised to create one where none adequately existed; and it is administered so as to meet the ends of justice in a summary manner.

The object of the law of 1850 was to invest the commissioners with full power and authority to receive, examine, and decide upon the validity of the asserted claims for the reclamation of fugitive slaves. Their decision, within the scope of their authority, is conclusive and final. If they pronounce the claim valid or invalid, their award in the premises is conclusive. The parties must abide by it as the decision of a competent tribunal. The attempt to arrest its decree by a State tribunal, or deny its conclusiveness, is a manifest violation of the exclusive authority of Congress. It is doing that indirectly which the law itself prohibits to be done directly. It is, in effect, impeaching collaterally a sentence which the law has pronounced to be valid.

But it is objected, that the commissioners are required by that act to exercise judicial power, and are, therefore, judges; and the Constitution prescribes that the judges who may be called into existence by Congress "shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." As these commissioners do not hold their offices by that tenure, nor receive such compensation as the Constitution prescribes it is clear that if a court adopts the opinion that they are *judges*, they are not constitutionally appointed, and their acts will be declared void, for want of lawful jurisdiction.

What tenable ground is there for alleging that the commissioners are *judges ?* They are "to hear and *determine*"—what? That the claimant of the fugitive has established by competent testimony that he is entitled to the aid of the law in returning him to the State whence he escaped. The commissioner's decision on this question is of no more consequence or effect, in any ulterior proceeding, than that of a Justice of Peace who commits a man to prison on a charge of theft or other crime.

The doctrine advanced by the enemies of the law would perhaps prove also that the Federal Government ought not to have the power of creating officers to operate internally—a position that would defeat all the provisions of the Constitution, and all the purposes of the Union. The truth is, that no Federal Constitution can exist without powers that in their exercise affect the internal policy of the component members. It is equally true, that no Government can exist without a right to create subordinate officers for those purposes which proceed from, and concentre in itself. The act of 1850 is simple and operative in its nature, general in its principle, and not at the disposal of a single will. There can be little confidence in a security under the revisal of thirty different deliberatives. It must, once for all, be defined and established on the faith of all the States, and not revocable by any, without a breach of the general compact.

Nobody objects to a State enforcing its own laws; all that is claimed is, that in executing them, it should not violate the laws of the Union, which are paramount. *Sic utere tuo ut alienum non lædos.*

Principles no less fundamental, and asserted by all writers, and sanctioned by universal assent, are the sovereignty of each State within its own territories; and that each nation may regulate every *interior* interest without giving offence, and without any accountability to any other nation; what shall be deemed to be *property*, and what shall not be; the mode of acquisition, possession, or alienation, are all subjects which each State reserves to itself. The principle cannot be questioned that every State has a right to establish such police regulations as a regard to the peace, health, or security of its inhabitants may render necessary. All quarantine laws rest upon this principle. In the cases of Norris *vs.* Boston, and Smith *vs.* Turner, the Judges of the Supreme Court of

the United States, in delivering their opinions, repeatedly declared the law to be as we have stated. Chief Justice Taney said:

"I think it, therefore, to be very clear, *both upon principle, and the authority of adjudged cases*, that the several States have a right to remove from among their people, and to prevent from entering the State, any person, or class or description of persons, whom it may deem dangerous or injurious to the interests and welfare of its citizens; and that the State has the exclusive right to determine, in its sound discretion, whether the danger does or does not exist, free from the control of the General Government."

CHAPTER VI.

Have the Legislatures of the States the power to prohibit the execution of a law emanating from the National Legislature?

The powers of the Government again are the objects of attack, and some of them most essential to its maintainance are denied to have been granted by the Constitution; for if the powers of the Government can be curtailed and enervated, and its operations embarrassed, a near approach may in this way be made to a state of anarchy, while the form and semblance of government is still maintained. Finally, the desperate plunge of defeating an act of Congress is proposed. Doctrines tending to the overthrow of the Constitution were never broached with more boldness, and urged with greater vehemence than during the last few years.

The position assumed by the opposers of the act of 1850, for it is unaccompanied by any reserve or qualification whatsoever, amounts in fact to nothing less than this, that both branches of the Legislative department of this nation, including of course the Chief Executive, who approved of the law of 1850, have manifestly been guilty of a dereliction of duty, a palpable abuse of power, while in the exercise of their official functions.

An imputation of so grave and serious a nature is not, indeed, in so many words pronounced against them, but as much as this is clearly implied by the whole of the proceedings of the Legislature of Vermont. If, according to the naked assertion of the act of Vermont, which is wholly unaccompanied by any allowance for a palpable error of judgment, the Congress of these United States have, on any occasion, been found to exercise powers not conferred, nor even contemplated by the parties to the federal compact, the inference would seem to follow, of course, for all acts of a legislative body must be supposed to have been the result of deliberation, that the usurpation of power was perpetrated knowingly, intentionally. Indeed, we have been reluctantly led to the conclusion, in connection with the extraordinary measures, and still maintained by a majority of the people of that State, and in their hall of legislation, that it was, in reality, their deliberation and intention to pronounce a sentence not less serious and severe against the legislative action of the General Government. It is, from a due consideration of all the circumstances of the case, that we are constrained to undertake, principally with a view to the reversal of this sentence, a full review of all the reasons upon which Vermont has based her action. In this connection, it may be useful to notice, very briefly, the grounds on which not the leading politicians only, but the opposers of the law, have attempted to justify the extraordinary proceedings that have been alluded to. It is assumed, and accordingly it has been promulgated, as one of the first and fundamental principles in their new theory of the Federal Government, that not one jot or tittle of the sovereignty of the State was surrendered or compromised in any manner at the formation of the Union. That a State has a right, of course, to be its own interpreter of the laws of the Federal Government, and to be the judge, in the last resort, of their validity; that whenever a State, in its sovereign capacity, shall be pleased to pronounce that the Congress of the United States have, in regard to any of their enactments, transcended the authority delegated to them by the Constitution, all such acts must thenceforth, so far at least as concerns the citizens of such State, be considered as utterly void and ineffectual. Furthermore, it is assumed that such enactments are not only binding *upon all within the jurisdiction of the State*, but conclusive, also, against all the authorities of the General Government. From this novel and most extraordinary doctrine, it results

as a consequence, that an act of the highest legislative authority of this nation, whatever may be its scope or object, or however urgent, in reference either to the foreign or internal affairs of the whole people, may have been the cause of its adoption, when thus brought into question, remains as it were *in abeyance* at the command of a single State!

Such, in substance, appears to be the theory of State legislation which has recently been promulgated, and is still maintained by the constituted authorities of a member of this confederacy. We conceive that it would be a useless appropriation of time were we to proceed any further on a course of reasoning, in order to demonstrate the utter fallacy and impracticability of the doctrines adverted to, or to dwell any longer in contemplating the consequences in which, should they be sustained, they must naturally and necessarily involve the peace and safety of the Union. Their tendency, it is apprehended, is quite too obvious to require, or even to admit of argument or illustration. They manifestly go to resolve at once our present glorious system of National Government into its original elements, and would have, not for the present generation, but for posterity, the fearful, if not utterly hopeless task, of building some frail and miserable fabric upon its ruins.

Since the adoption of the act of 1850, one of the States of this Union has seen fit to proclaim aloud throughout the land her displeasure on account of a certain prominent measure of the National Government. She has been pleased to assign as the cause of her act of nullification, that the highest legislative authority of the nation had assumed to itself the exercise of unwarrantable power; and on this ground has, at length, placed herself in the attitude of open defiance of the Constitution and the laws of the land.

It is not less true, however, that whatever of sympathy or commisseration may have been felt for those on whom the act of 1850 operates, not a single other State in this Union is united with her in sentiment, either as to the legal grounds of her complaint, or the propriety of the measures to which she has seen fit to resort for redress. On the contrary, in relation to both the one and the other, the voice of the people in the non-slaveholding States, in their primary assemblies, in their halls of legislation, and everywhere, has been heard not in a tone of expostulation only, but of severe censure and reproof, to pronounce its decision against her.

Indeed, it requires but a cursory glance at that statute to discover, that the Legislature has attempted obliquely to lay hold on a power which, if carried into execution, will shock the spirit of the whole confederacy. For it claims complete ascendancy for the State courts over the United States courts; rendering the decrees of the latter nugatory, when under the act of 1850 they may be brought in conflict with the State courts. The act of Vermont authorizes the State courts to interfere.

The general scope and objects of the Constitution preclude, therefore, the idea that it was the intention of the parties to it, that the States should retain their absolute political independence, or that they possess any right under it to annul the acts of the National Government. The same conclusions result with equal certainty from a view of its particular provisions. Had it been intended that the States should possess the important power of annulling or repealing, at discretion, the acts of the General Government, this power would, undoubtedly, have been given to them in express terms. It is not even pretended that the Constitution contains any such express concession. Not only is there no express concession to this effect, but the idea that any thing of the kind was intended, is precluded by several provisions of an opposite character. "*This Constitution, and the laws and treaties made in pursuance of it*, are the supreme law of the land, any thing in the constitution and laws of any State to the contrary notwithstanding." By this provision, any act of a State, whether performed in its sovereign or legislative capacity, pretending to annul an act of the General Government, is declared in advance to be null and void.

We think the State legislatures have no such power. The act of 1850 was enacted by Congress for the purpose of carrying into effect a national object. It is therefore a national measure, brought into existence by the exertion of the legislative power of the Union, and it would be monstrous if any State legislature could impede the execution of a law made for national purposes, relative to a distinct matter over which the national legislature have the exclusive right of legislation. Congress have a right to judge of the proper means of executing its laws; they have the power of directing those means by any law not forbidden by the Constitution; and no State legislature can, consistently either with the letter or spirit of the Constitution, interfere with the exercise of this power. It is certain that the power itself is the power of the nation—that the whole Union are at once the grantors, and, (by their representatives,) the depositories of it—the subject

matter upon which, or with a view to which it is executed, is entirely a national object, and that the sovereignty of Congress over it was communicated for national ends.

As this dominion flows from the same source with every other power possessed by the Government of the Union; as it is executed by the same Congress; as it was created for the common good and for universal purposes; it is impossible that it should not be of equal obligation throughout the Union, in its effects and consequences, with every power whatever known to the Constitution.

The power of the Union, constitutionally executed, knows no locality within the boundaries of the Union, and can encounter no geographical impediments; its march is through the Union, or it is nothing but a name. The States have no existence relatively to the effect of the powers delegated to Congress, save only where their assent or instrumentality is required, or permitted, by the Constitution. In every other case, the effect of constitutional Congressional legislation is commensurate with United America, and State legislation in opposition to it is but a shadow. The States or the people can only resist the natural effect of such Congressional legislation by resisting the exercise of their own sovereignty, created upon high inducements of constitutional policy.

A case of this sort bears no analogy to that of one State repelling within its limits, by penal sanction, the effect of the laws of any other State, upon consideration of local expediency, or otherwise. A State that repels the effects of the laws of another State, within its territory, is no party to those laws; it has no direct interest in them—it did not assist in making them, immediately, or derivatively, or constructively. It cannot assist in repealing or modifying them. But here, the State law is its own law, as being a member of the Union, although revocable by it without the concurrence of other States. The effect is for its own advantage in the eye of the Constitution. It can contribute to revoke the law by its representatives in Congress; and it is bound, by the constitutional grant of power in virtue of which it has been enacted, since it participated in that grant, as in every other grant of power, to the Government of the Union. It is proclaimed to the community; it speaks for itself; and if it means any thing, it enunciates a rule of public conduct, as a law, exacting the obedience of the people.

A tacit submission to pretensions thus lofty and comprehensive, but which we trust are most of them untenable, would, we conceive, be an abandonment of rights openly recognized, and a dereliction of the most important interests of our country.

CHAPTER VII.

The power of Legislating in regard to the Reclamation of Fugitive Slaves is necessarily exclusive in Congress; and the same power cannot be Constitutionally exercised by the States.

The exercise of the power in question by the States, is totally contradictory and repugnant to the power granted to the Congress of the United States.

This being the policy of the General Government, is not the possession of the power by the States totally contradictory, and repugnant to the authority conferred on the Federal Government? What avails it that the General Government, in the exertion of that portion of its power which embraces this subject, if the States in which the fugitive is found may immediately reverse the action of the Government, and refuse to comply with the demands of the law? If the power remains in the States, the grant to the General Government is nugatory and vain; and it would be in the power of any State in the Union to overturn the adjudications of the agents of the Federal Government, upon a subject admitted to be within its appropriate sphere of action, and to have been clearly and necessarily included in the constitutional grant of power.

The power in question, from its nature, cannot be a concurrent one, to be exercised both by the States and the General Government It must belong, exclusively, to the one or the other. It is the power of deciding the very delicate question, whether the fugitive demanded ought or ought not to be surrendered. Now it is very evident, that the tribunals of the Federal Government and of the State may not always agree on this subject. The decision would necessarily be repugnant to the Constitution. The thing done would be in direct opposition to the supreme law of the land, which had commanded that it should not be done. This class of cases, where there is an express prohibi-

tion, has no relation whatever to any conflict between the powers granted to the Federal Government, and those reserved to the State. Such a State law as we just supposed would be equally repugnant to the Constitution, whether there was or was not any power granted to the Federal Government over the subject on which such a State law operated. This class embraces, also, certain cases in which a power such as has been previously exercised by the States is granted to the Federal Government in terms which import exclusion. In such a case it has been held, that although there is no prohibition upon the States, yet the terms of the grant, by necessary construction, imply it; because a provision that one Government shall exercise exclusive power, is tantamount to a declaration that no other shall; for if any other could, it would cease to be exclusive; and such a declaration is therefore, in effect, a prohibition. Here too, then, any action on the part of a State upon a subject thus exclusively granted to the Federal Government, would be repugnant to the Constitution, operating by its own intrinsic force.

The second class of constitutional provisions is where there is no express prohibition on the States. Where there was no prohibition to the States, the exercise of such a power on their part is inconsistent with the powers upon the same subject conferred on the United States.

It is admitted, that an affirmative grant of a power to the General Government is not of itself a prohibition of the same power to the States; and that there are subjects over which the Federal and State Governments exercise concurrent jurisdiction. But where an authority is granted to the Union, to which a similar authority in the States will be absolutely and wholly contradictory and repugnant, then the authority of the Federal Government must be supreme and paramount.

That law must be paramount, from necessity, to avoid the confusion of adverse and conflicting legislation. So far as the States are concerned, the power, when thus exercised, is then exhausted. This is the rule as we understand it, settled by authority, in regard to the construction of the concurrent power of legislation in the States, and which is conceded to be binding upon the State tribunals on questions arising under the Constitution and laws of the United States —Sturges vs. Crowninshield, 4 Wheat. 193; Houston vs. Moore, 5 ib., 1. See also Livingston vs. Van Ingen, 9 John R., 561, 566, 568, 575; 13 Mass. R., 15; 3 Serg. and Rawle, 179; 1 Kent, 387; Steamboat Co. vs. Livingston, 3 Cowen, 716, 751, 753. This principle is undoubtedly essential to peace and harmony in the action of the two Governments.

The doctrine distinctly maintained is, that all police laws are constitutional, unless in conflict with some law of the United States. This opinion is fully sustained in the case of New York vs. Miln, 11 Peters, 102; and in the License cases, 5 Howard, 504; Commonwealth vs Kimball, 24 Pick. 359. It is not legislation upon the same subject, or every seeming conflict, that amounts to unconstitutional collision. The rule applicable to collision is laid down with some distinctness in 1 Story's Com., 432: "In cases of implied limitations or prohibition, it is not sufficient to show a possible or potential inconvenience There must be plain incompatibility, a direct repugnancy, or an extreme potential inconvenience, leading to the same result."

When we speak of concurrent powers, we mean when both can do the same thing; but it is contended, that when the two powers under discussion were confined to their proper sphere, not only the State authority could not do what could be done by Congress, but the reverse is true; that is, that they never are nor can be concurrent powers. It is not a concurrent power. A concurrent power excludes the idea of a dependent power. Every concurrent or other power in a State is subject, in its exercise, to this limitation, that in the event of a collision, the law of the State must yield to the law of Congress constitutionally enacted. New York *vs.* Miln, 11 Peters, 102; Commonweath *vs.* Kimball, 24 Pick. 359.

In the language of the Supreme Court, in the case of Sturges *vs.* Crowninshield, 4 Wheat 196, "It is not the mere existence of the power, but its exercise, which is incompatible with the exercise of the same power by the States." But in the same case another principle is stated which is equally sound, and which is directly applicable to the point under discussion; that is to say, that it never has been supposed that the concurrent power of State legislation extended to every possible case in which its exercise had not been prohibited. And that "whenever the terms in which a power is granted to Congress, or the nature of the power requires that it should be exercised exclusively by Congress, the subject is as completely taken from the State legislatures as if they had been expressly forbidden to act on it." This is the character of the power in question.

All powers of the States, as sovereign States, must always be subject to the limitations expressed in the United States Constitution, nor can they any more be permitted to overstep such limitations of power by the exercise of one branch of sovereignty than another. What is forbidden to them, and what they cannot do directly, they should not be permitted to do by color, pretence, or oblique indirection. Among other matters limiting and restricting State sovereignty is this:

In the Blackbird Creek Marsh Company, the court held that a State law was not invalid merely because it made regulations of commerce, but that its invalidity depended upon its repugnancy to the law of Congress, passed in pursuance of the power granted. [2 Peters, 245; 11 ibid, 132; 14 ibid, 579; 16 ibid.]

If Congress has the power to regulate a subject matter, a State cannot interfere to oppose or impede such regulation The General Goverment, though limited, is supreme on those objects over which it has power. [Martin *vs.* Hunter, 304 ; Cohen *vs.* Virginia, 6 Wheat 384 ; Prigg *vs.* Pennsylvania, 16 Peters, 539.]

The doctrine of State legislative interposition assumes the position, that the constituted agents of a State may arrest the execution of any law emanating from the National Legislature. It maintains that a State may impose a fine or penalty on any person employed in the execution of any law of the United States The carrier of the mail, the collector of the revenue, the marshal of a district, the recruiting officer, may all be inhibited, under ruinous penalties, and may be arrested in the performance of their respective duties This doctrine further asserts, that each member of the Union is capable, at its will, of attacking the nation, of obstructing its progress at every step, of acting vigorously and effectually in the execution of its designs, while the nation stands naked, denuded of its defensive armor, and incapable of protecting its agents or executing its laws, otherwise than by proceedings which are to take place after the mischief is perpetrated.

If the United States cannot rightfully protect the agents who execute a fugitive slave law authorized by the Constitution, from the direct action of State authorities, in the performance of their duties, they cannot rightfully protect those who execute any law.

It is a maxim applicable to the interpretation of a grant of political power, that the authority to create must infer a power effectually to protect, to preserve, and to sustain. [See McCulloch *vs.* Maryland, 4 Wheat. Rep., 426.] It is no less a maxim, that the power to create a faculty of any sort, must confer the power to give it the means of exercise. A grant of the end is necessarily a grant of the means.

All governments which are not extremely defective in their organization, must possess, within themselves, the means of expounding as well as enforcing their own law. To allow a State to arrest the execution of a law of Congress, would be equivalent to an expunction of the act from the statute book, and leave it dependent upon the fluctuating will of the State legislatures, obeying or disregarding, at pleasure, this constitutional provision, and giving or refusing operation to it, by enacting or repealing laws upon the subject, and thus changing a fixed, permanent, established, fundamental law, operative or inoperative, as the legislatures might act.

And what must be the inevitable effect of all these various readings of the holy text, under which different and discordant rights are claimed? No one can doubt it must be civil war, a heart rending, interminable war, unless we are content to return to the fold from whence we shall have strayed, to come again within the pale of the Constitution, and consent to be governed once more by the ancient rules which the necessities, not of one, but of all, produced; which the wisdom, not of one, but of all, digested; and for the preservation of which, unaltered by any, the peace and blessings of the union of all require the guarantees of each.

It is strange, nevertheless it is true, that something is continually occurring to humble the vanity of man with regard to his boasted intellect, and to draw a sigh of regret from every reflecting bosom at witnessing the inability of human reason to contend with human prejudice. That the weak, the vicious, and the ambitious, should be victims of this prejudice, is too common an occurrence to excite surprise; but that the strong and the enlightened should suffer the same kind of eclipse, is a practical lesson on human infirmity, well calculated to teach humility to us all. Seeing, as we do every day, what opposite conclusions are deduced from the same premises, and how much feeling is blended with the best operations of our reason, what candid man is there among us who can arrogate to himself the exclusive power to arraign the official conduct of others, and pronounce their action as usurpatory and unconstitutional? The friends of the law have labored to look at the provisions of the act of 1850 as abstractedly and disinterestedly as if they were to pass judgment upon it; and thus looking at it, they have read with

amazement the interpretations imposed upon it by those who advocate its repeal, and been astonished at the feelings of horror expressed by them at the contemplation of the same feature which has not at all disturbed the equinanimity of others How can we account for this but on the presumption that there is some cloud of prejudice on the one side or the other, which intercepts the view, and prevents us from seeing things as they really are. The friends of the measure look in vain at the effects of the act for any thing to justify those misrepresentations which have been so profusely poured forth in certain sections of the Union, denunciatory of its provisions; and its friends cannot see this deformity in the portrait. We are constrained to conclude that it exists only in the imagination of those who are unwilling that it shall remain on the statute book.

If the question of constitutionality of the law were one of doubtful construction, such long acquiescence in it, such contemporaneous expositions of it, and such extensive and uniform recognitions would, in our judgment, entitle the question to be considered at rest. Congress, the Executive, and the Judiciary have, upon various occasions, acted upon this sound and reasonable doctrine. [See Stuart *vs.* Laird, 1 Cranch, 95; Martin *vs.* Hunter, 1 Wheat. 204; Cohen *vs.* The Commonwealth of Virginia, 6 Wheat. 264.]

If this decision of the constitutionality of the act of 1793 by the most august tribunal in the land stood upon its own exalted authority alone, it ought to command the respect and obedience of all other tribunals, State and Federal, within the United States. For if the Supreme Court of the United States *cannot* finally and definitively settle a controverted interpretation of a law of the United States, our admirable but complicated system of free government would be thrown into embarrassment as to the administration of justice, and its powers rendered perfectly nugatory. In the celebrated case of Prigg *vs.* The Commonwealth of Pennsylvania, Justice Story, who delivered the opinion of the Court, expounded the law as follows:

"The same uniformity of acquiescence in the validity of the act of 1793 upon the other part of the subject-matter, that of fugitive slaves, *has prevailed throughout the whole Union*, until a comparatively recent period. Nay, being from its nature and character more readily susceptible of being brought into controversy in courts of justice than the former, and of enlisting in opposition to it the feelings and prejudices of some portions of the non-slaveholding States, it has naturally been brought under adjudication in several States of the Union, and particularly in Massachusetts, New York, and Pennsylvania; AND ON ALL THESE OCCASIONS ITS VALIDITY HAS BEEN AFFIRMED." [Cited the cases of Wright *vs.* Deacon, 5 Serg. & Rawle, 62; Glen *vs.* Hodges, 9 Johns. Rep 67; Jack. *vs.* Martin, 12 Wend. 507; and Com'th *vs.* Griffin, Pick. 11, *as cases directly in point*] "So far as the judges of the courts of the United States have been called upon to enforce it, and to grant the certificate required by it, it is believed that it has been uniformly recognised as a binding and a valid law, and as imposing a constitutional duty." [Peters's Supreme Court Reports, vol xvi, p 539, *et sequitur*]

The point of constitutionality fairly rose in the latter case, was elaborately discussed in the argument, and was deliberately considered by the Court.

To impose restraints on State legislation, as respected this delicate and interesting subject, was thought necessary by all those patriots who could take an enlightened and comprehensive view of the South, and the principle obtained an early admission into the various schemes which were submitted to the Convention. In framing an instrument which was intended to be perpetual, the presumption is strong that every important principle introduced into it is intended to be perpetual also; that a principle expressed in terms to operate in all future time, is intended so to operate. But if the construction for which the agitators contend be the true one, the Constitution will have imposed a restriction in language indicating perpetuity, which every State in the Union may elude at pleasure.

This act was approved of by President Fillmore and his distinguished Cabinet. This Cabinet, who thus supported this law, have been denounced as derelict to their duty, who sought the gratification of their personal views at the expense of the public good; they have been lampooned and vilified by all the presses identified with the opposition to this act. Their weight of character, the purity of their lives, the consistency of their principles, and their force of reasoning, were alike unavailing. It was sufficient that they dared to think for themselves; to prefer what they regarded as the interests of the country, to the gratification of selfish *considerations*. To refuse a ready acquiescence in what was required of them to do by the opposers of the law, they felt themselves at liberty, without at least understanding the questions involved, to misrepresent their acts and impugn their motives.

CHAPTER VIII.

Propositions submitted to Congress with a view of giving additional securities to Slaveholders.

MONDAY, OCTOBER 31, 1791.

Ordered, That a committee be appointed to prepare and bring in a bill or bills providing the means by which persons charged in any State with treason, felony, or other crime, who flee from justice, shall, on the demand of the Executive authority of the State from which they fled, be delivered up, to be removed to the State having jurisdiction of the crime, under the laws thereof, and persons *held to service or labor* in one State, under the laws thereof, escaping into another, shall be delivered up on claim of the party to whom such service or labor may be due; and that Mr. Sedgwick and Mr. Bourne, of Massachusetts, and Mr. White, of Virginia, be the said committee. [See House Journal, 1st and 2d Cong. 1789-1792, p. 444.]

WEDNESDAY, DECEMBER 21, 1796.

Mr. PATTON moved that the report of the committee on commerce and manufactures made last session, respecting the kidnapping of negroes and mulattoes from different States, contrary to the laws of said States, shall be committed to the committee of the whole house. [See Carpenter's Debates, page 141.]

The case of stolen goods would apply the same as negroes; they were looked upon, in the States where slavery was permitted, as *individual property;* therefore he thought the stealing in one case would apply to the other. [See speech of Edward Livingston, of New York, Carpenter's Debates, page 172.]

There are laws in some of the States, Pennsylvania for one, that will not suffer slaves to be taken out of one State into another. [See speech of Mr. Swanwich, of Pennsylvania, Carpenter's Debates, page 174.]

THURSDAY, DECEMBER 29, 1796.

Mr. MURRAY, of Maryland, proposed the following resoution:

Resolved, That a committee be appointed to inquire if any, and what, alterations are necessary in the act, entitled "An act respecting fugitives from justice, and persons escaping from their masters," which was ordered to lie on the table.—See Carpenter's Debates. On Monday, January 2d, 1797, the resolution was agreed to, and a committee was appointed of Messrs. Murray, Cooper, and Kittera.

MONDAY, JANUARY 2, 1797.

Mr. SWANWICH moved, that the report of the Committee on Manufactures on the subject of kidnapping negroes and mulattoes should be recommitted to that Committee, with instructions to report by bill or otherwise.

On motion, the question was decided. "Shall the report be recommitted to the Committee of Commerce and Manufactures?" Carried—ayes, 46.

FRIDAY, DECEMBER 11, 1801.

On motion—

Resolved, That a Committee be appointed to inquire into the expediency of amending the act entitled "An act respecting fugitives from justice and persons escaping from the service of their masters;" and that said Committee be authorized to report by bill or otherwise.

DECEMBER 18, 1801.

Mr. NICHOLSON, from the Committee appointed, according to order, reported a bill to amend the act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" which was received and read the first time.

JANUARY 18, 1802.

The House resumed the consideration of the amendments, on the 15th instant, from the Committee of the Whole House, to the bill to amend the act entitled an act respecting fugitives from justice, and persons escaping from the service of their masters. It

passed in the negative—yeas 43, nays 56. Those who voted in the affirmative from the non-slaveholding States are, Lucas Elmendrof, of New York; Elmer, of New Jersey; Joseph Heister, Penn.; Michael Leib, Penn.; John P. Van Ness, David Thomas, of New York.

FRIDAY, JULY 21, 1817.

The bill from the Senate, entitled "An act respecting the transportation of persons of color for sale, or to be held to labor," was read the first and second times, and committed to the Committee on the African slave trade.

SATURDAY, FEBRUARY 22, 1817.

Mr PICKERING, of Massachusetts, from the Committee on the African slave trade, to which was committed the bill from the Senate entitled "An act respecting the transportation of persons of color, for sale, or to be held to labor," reported the same without amendment. *Not acted on.* [See House Journal, 2d sess, 14th Congress.]

MONDAY, FEBRUAY 22, 1819.

The Senate resumed the consideration of the bill respecting the transportation of persons ot color for sale, or to be held to labor.

On motion of Mr. FROMONTIN, that the further consideration thereof be postponed until the 4th day of March next, it was determined in the negative—yeas 7, nays 25.

Those who voted in the negative are, Burnett, of Rhode Island; Daggett, of Connecticut; King, of New York; Lacock, of Pennsylvania; Miller, of Massachusetts; Otis, of Massachusetts; Sanford, of New York.

On the question of engrossment, it was determined in the affirmative. [See Senate Journal, 2d sess. 15th Congress, pp. 291, 292, 297.]

TUESDAY, JANUARY 15, 1819.

On motion of Mr. PINDALL, it was--

Resolved, That a committee be appointed to inquire into the expediency of providing by law for delivering of persons held to labor or service, in any of the States or Territories, who shall escape into any other State or Territory; and that the said Committee have leave to report by bill.

Mr. Pindall, Mr. Anderson, of Kentucky, and Mr. Beecher were appointed the said Committee.

January 16, 1819, reported the bill. [See House Journal, 2d sess. 15th Congress.] This bill was not acted on.

SATURDAY, MARCH 18, 1820.

On motion of Mr. ANDERSON, of Kentucky, it was--

Resolved, That a committee be appointed to inquire into the expediency of providing by law more effectually for reclaiming persons held to service or labor in one State, and escaping therefrom into another State.

Mr. Anderson, Mr. Pindall, and Mr. Dickinson, of New York, were appointed the said Committee. No further action.

The attention of the representatives from Maryland was called, by resolution of the Legislature, to the growing evil under which many of the citizens of that State labored from the countenance and protection which their fugitive slaves received from the authorities of the adjacent States. In obedience to this resolution, Mr. Wright introduced the following proposition, which was referred to the Judiciary Committee, consisting of three members from non-slaveholding States, Messrs. Sargeant, of Pennsylvania, Dickinson, of New York, and Whipple, of New Hampshire.

MONDAY, DECEMBER 17, 1821.

Mr. WRIGHT submitted the following proposition, viz:

Resolved, That a committee be appointed to inquire into the expediency of providing by law more effectually to protect the rights of those entitled to the service or labor of persons in one State, under the laws thereof, escaping into another, and for their delivery to their rightful owners, agreeably to the provisions of the Constitution."

It was, on motion of Mr. CAMPBELL, of Ohio, referred to the Committee on the Judiciary. [See House Journal, 1 sess. 17th Congress, p. 62.]

JANUARY 14, 1822.

Mr. SERGEANT, from the Committee on the Judiciary, to whom the subject had been referred, reported a bill to provide for delivering up persons held to labor or service in any of the States or Territories, who shall escape into any other State or Territory; which was read the first and second times, and committed to a committee of the whole house to-morrow. [See House Journal, 1st sess. 17th Congress, p. 143. See bills, No. 35.] This bill contains provisions equally as stringent as the bill of 1850.

☞ Section seven of the bill reported by Mr. Sergeant fixes the same penalties for obstructing or hindering any officer in seizing and arresting a fugitive as the act of 1850.

CHAPTER IX.

Memorial of the Pennsylvania Society for promoting the Abolition of Slavery.

FRIDAY, FEBRUARY 12, 1790.

The memorial of the Pennsylvania Society for promoting the abolition of slavery, was presented to the House, praying "that Congress may take such measures in their wisdom, as the powers with which they are invested will authorize, for promoting the abolition of slavery, and *discourage every species of traffic* in slaves. This memorial was referred to Mr. Foster, Mr. Huntington, of Connecticut, Mr. Gerry, of Massachusetts, Mr. Lawrence, of New York, Mr. Sinnickson, of New Jersey, Mr. Hartley, of Pennsylvania, and Mr. Parker, of Virginia. [See 1st and 2d Con., 1789 92, v. 1, p. 180.]

This Committee reported, "that Congress, *by a fair construction of the Constitution*, are equally restrained from interfering in the emancipation of slaves, who already are, or who may within the period mentioned, be imported into, or born within, any of the said States." Again they say, "that Congress has no authority to interfere in the internal regulations of particular States, relative to the instruction of slaves in the principles of morality and religion; to their comfortable clothing and accommodations, and subsistence; to the regulation of their marriages, and the prevention of the violation of their rights thereof."

The power being granted under the authority of Congress, to regulate the reclamation of fugitive slaves, the Second Congress which assembled possessed plenary, supreme, and exclusive power over the whole subject of prescribing the means for the accomplishment of the purpose designed by the law. Many of the great men who formed the Constitution were members of Congress for many years succeeding its adoption. Why, then, did they never exercise, or ever propose to exercise the power of repeal upon the ground of its unconstitutionality. They were called upon by memorials. immediately after the organization of the Government, to interfere, both as among the States and as to foreign nations with the subject of slavery. Why did they not attempt its abrogation? Because it was then unanimously acknowledged that Congress possessed such a power.

In 1794 memorials were transmitted by the Quakers and others to Congress, calling on that body to exercise all its constitutional power over the subject; and these memorials were referred to a committee of the House, consisting of Mr. Trumbull, of Connecticut, Mr. Giles, Mr. Talbot, and Mr. Graves, all members from non-slaveholding States, except Mr. Giles, of Virginia; the Select Committee were favorable to the proposition of the memorialists. The Committee offered no measure of repeal, but brought in an act "to prohibit the slave trade from the United States to any foreign place or country." [2d vol. Laws of U. States, 383, Bioren's edition.]

These proceedings, sustained by Mr. Giles's statement, as a member of the committee, ought to be conclusive. In the debates of the Virginia Convention, of 1829, 1830, p. 346, we find Mr. Giles using the following language: "Mr. Giles then referred to a memorial which was presented to Congress by the representatives of several societies of Quakers. He happened to be a member of the committee to whom the subject was referred. He had relied on the declaratory resolution, in the negotiation which he had to carry on with the Quakers. All the committee were, in principle, in favor of the mea-

sure; but it was his duty to satisfy these persons that Congress had no right to interfere with the subject of slavery at all. He was fortunate to satisfy the Quakers, and they agreed that if Congress would pass a law to prohibit the citizens of the United States from supplying foreign nations with slaves, they would pledge themselves and the respective societies they represented never again to trouble Congress on the subject. The law did pass, and the Quakers adhered to their agreement. He did not know whether or not the documents on the subject of this negotiation were still in existence, but he believed they had been filed away with other papers."

Now, no less than thirty laws have been passed by Congress on the subject of the slave trade, and no less than seven propositions have been submitted to its consideration in relation to the recapture of fugitive slaves, from 1791 to the present period; yet no one proposition suggests the idea that Congress, in enacting the law of 1793, transcended its legitimate powers, either directly or by implication.

CHAPTER X.

The Slave Trade prohibited by the Constitution.

This was the second compromise. The non importation article recognizes the institution of slavery; it was effected by the deliberate action of the Convention. The committee who recommended this compromise consisted of Messrs. Rutledge, of South Carolina, Randolph, of Virginia, Wilson, of Pennsylvania, Ellsworth, of Connecticut, and Gorham, of Massachusetts. This committee, it will be recollected, were to reduce to the form of a Constitution the resolutions agreed on by the Convention. This committee inserted in their draft the following clause: "No tax or duty shall be laid by the legislature on articles exported from any State, nor on the *migration* or *importation* of such persons as the several States shall think proper to admit, nor shall such migration or importation be *prohibited*."

The migration or importation embraced in it is, in the debates, uniformly and plainly called the slave trade by certain Southern States, which the Convention would have abolished by the Constitution itself but for the avowed necessity of propitiating these States by its toleration for twenty years. There, too, it will be seen that Mr. Governeur Morris, with a frankness and sagacity highly creditable, objected to the ambiguous language in which the section was prepared and adopted. He said he was for making the clause read at once "the importation of slaves into North Carolina, South Carolina, and Georgia shall not be prohibited, &c." This, he said, was most fair, and would avoid the ambiguity by which, under the power with regard to importation, the liberty reserved to the States might be defeated. He wished it to be known, also, that this part of the Constitution was a compliance with these States. [3 Madison Papers, 1427 and 1478.]

Judge Iredell, the leading member of the Convention, from North Carolina, thus explains this section, when submitted to the State Convention: "The Eastern States, who long ago have abolished slavery, did not approve of the expression *slaves*. They therefore used another term which answered the same purpose. * * The word *migration* refers to free persons, but the word importation refers to slaves, because free persons cannot be said to be imported." [3 Ell. Deb., 1st ed. page 978.]

The word "migration" was added to "importation" to cover *slaves* when regarded as persons rather than property. It was intended by the mass of the Convention as embracing "slaves," and calling them "persons," out of delicacy. [5 Elliott's Debates, 457, 477; 3 ib. 251, 541; 4 ib. 119; 15 Peters, 113, 506; 11 ib. 136; 1 Black. Com. by Tucker, append. 290.] It was so considered in the Federalist soon after, and that view regarded as a "misconstruction." [Federalist, No. 42.] So afterwards thought Mr. Madison himself, the great expounder of the Constitution. [3 Elliott's Deb , 422.]

The Eastern States, notwithstanding their aversion to *slavery*, were very willing to indulge the Southern States, at least with a temporary liberty to prosecute the *slave trade*, provided the Southern States would, in their turn, gratify them by laying no restriction on *navigation acts;* and after very little time, the committee, by a very great majority, agreed on a report, by which the General Government was prohibited from preventing

the importation of slaves for a limited time, and the restrictive clause relative to navigation acts was to be omitted. [See Secret Debates, 64.]

The framers of the Constitution were unwilling to use the word slaves in the instrument, and described them as persons, and so describing them, they employed a word that would describe them as persons, and which had uniformly been used when persons were spoken of, and also the word which was always applied to matters of property. The whole control of the sentence, and its provisions and limitations, and the construction given to it by those who assisted in framing the clause in question, show that it was intended to embrace those persons only who were brought in as property.

In the debates which ensued on this clause, Mr. Ellsworth, one of the committee who reported it, was for leaving the clause as it now stands. "Let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves. *What enriches a part enriches the whole*, and the States are the best judges of their particular interests. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one." [Madison Papers, p. 1339, 1391.] Mr. Wilson, another member of the committee, objected: "All articles imported," said he, "are to be taxed; slaves alone are to be exempted. This is, in fact, a bounty on that article." This clause was referred to another committee, who modified it, by limiting the restriction to 1800. It was moved to guarantee the slave trade for twenty years, by postponing the restriction to 1808. This motion was *seconded* by Mr. Gorham, another member of the committee. Mr. Randolph, also of the committee, was against the slave trade, and opposed to any restriction on the power of Congress to suppress it. Two of the committee, then, we find, were against the slave-trade; and three, Messre. Rutledge, Ellsworth, and Gorham, for perpetuating it. The inducements which prompted the action of Messrs. Ellsworth and Gorham to yield their consent to the proposition, were of the most elevated character. They wished to throw no impediments in the formation of the Constitution. What was the language used by the chairman of the committee and others in the convention? Said Mr. Rutledge, "If the convention thinks North Carolina, South Carolina, and Georgia, will ever agree to this plan, (Federal Constitution,) unless their right to import slaves be untouched, the expectation is vain. The people of these States will never be such fools as to give up so important an interest." Said Charles Pinckney, "South Carolina can never receive the plan (of the Constitution) if it prohibits the slave trade. In every proposed extension of the powers of Congress, that State has expressly and watchfully excepted that of meddling with the importation of negroes." [Madison Papers, p 1389.]

Mr. Madison answered these objections, as urged by Governor Randolph and others, as follows: "I should conceive this clause to be impolitic, if it were one of those things which could be excluded without encountering greater evils. *The Southern States would not have entered into the Union of America*, without the temporary permission of that trade. And if they were excluded from the Union, the consequences might be dreadful to them and to us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The Union in general is not in a worse situation. Under the Articles of the Confederation it might be continued forever, but by this clause an end may be put to it after twenty years. There is, therefore, an amelioration of our circumstanc s. A tax may be laid in the meantime, but it is limited, otherwise Congress might lay such a tax as would amount to a prohibition. From the mode of representation and taxation, Congress cannot lay such a tax on slaves as will amount to manumission."

The acts prohibiting the slave-trade, also may be referred to, which recognize slaves as property. It was protected by the Constitution, and exempted from the whole force of legislative power. The principle, by which the South enjoyed the benefits of this trade, was protected by the Constitution, formed a basis of our representative system, entered into our laws, and mingled itself with the sources of authority. [See 4 vol. Laws of U. States, p. 96, 98.]

The liberty to import, implies unqualified liberty to sell, or hold possession of, at the place of importation. This is the argument in all its amplitude. In other words, the act of prohibition encouraged the importation. These propositions, it is believed, can be vindicated either by the legitimate meaning of the words, or the theory of the constitutional powers of Congress. Where importation may have been made with the direct view to sell or hold possession, does it not follow, by necessary induction, that permission for the former implies permission for the latter?

TUESDAY, DECEMBER 17, 1805.

The Senate resumed the motion made yesterday for leave to bring in a bill to prohibit the importation of slaves into any port or place within the jurisdiction of the United States; and the yeas and nays being required on the main question by one-fifth of the Senators, it passed in the affirmative—yeas 13, nays 9.

Those who voted in the negative were Adams and Pickering, of Massachusetts, and Tracy, of Connecticut.

So leave was given to bring in the bill.

WEDNESDAY, FEBRUARY 5, 1806.

On the bill laying a duty on slaves imported into the United States, on the question for the indefinite postponement—yeas 42, nays 69—(See House Journal,) the following members voting in the affirmative: Richard Cutts, Ebenezer Elmer, New Jersey; Wm. Findley, James Fisk, Andrew Gregg, John Lambert, Michael Leib, John Rea, Pennsylvania; David Hough, New Hampshire; Nehemiah Knight, Joseph Stanton, Rhode Island; Mathew Lyon, Jeremiah Morrow, Ohio; Gideon Olin, Vermont; Leaven, Massachusetts; Thos. Simmons, New York; John Cotton Smith, Connecticut; David Thomas, Philip Van Courtland, William C. Van Rensselaer, Henry W. Livingston, Gulian C. Verplanck, Samuel Riker, New York; Henry Southard, New Jersey; Jacob Crowninshield, William Sherman, Massachusetts; Roger Griswold, Connecticut; Frederick Connor, Joseph Heister, John Stewart, Pennsylvania.

WEDNESDAY, JANUARY 7, 1806.

The House resumed the consideration of the amendments reported by the Committee of the Whole House on the twenty ninth ultimo, to the bill to prohibit the exportation or bringing of slaves into the United States or the Territories thereof, after the thirty-first day of December, one thousand eight hundred and seven.

A motion was then made by Mr. BIDWELL further to amend the third section of the said bill in the following paragraph, to wit, "*and such ship or vessel, if brought into any port or place within a State or Territory, the constitution and laws of which prohibit slavery, shall, together with her cargo, tackle or apparel, and furniture, be forfeited,*" by striking out from the said paragraph the word "cargo;" and on the question thereupon, it passed in the negative—yeas 39, nays 77.

Those who voted in the negative from non slaveholding States are, Messrs. Conrad, and Gregg, of Pennsylvania, Davenport and Uriah Tracy, of Connecticut; Elmer, of New Jersey; Martin Chittenden, of Vermont; Henry W. Livingston, Van Cortland, Van Rensselaer, and Verplanck, of New York; Josiah Quincy, of Massachusetts; Henry Southard, of New Jersey; Samuel Tenney, of New Hampshire [See House Journal, vol. 5, 3d and 9th Congress, page 518.]

Another motion was made by Mr BIDWELL; and the question being put further to amend said bill by adding to the end thereof the following proviso, "*Provided, that no person shall be sold as a slave by virtue of this act,*" it passed in the negative—yeas 60, nays 60; the Speaker declaring himself with the nays.

Among the nays we find Samuel Tenney, of New Hampshire; U. Tracy, of Connecticut; Van Cortland, Van Rensselaer, Verplanck, Wadsworth, and H W. Livingston, of New York. [See House Journal, 5 vol. 8th and 9th Congress, page 515.]

The bill laying a duty on slaves imported into the United States being under consideration, and the question being on the indefinite postponement thereof, it was negatived: yeas 42, nays 69.

For more than twenty years the slave trade was protected by the Constitution—it was viewed by the South as a valuable privilege, and one that was made a preliminary matter in the adjustment of the controverted questions which convulsed the Convention. Paradoxical as it may appear, the principles on which this compromise was adjusted constitute the very bond of our glorious Union.

CHAPTER XI.

Taxation and Apportionment of Representation.

The Congress, acting under the Constitution, have sanctioned the ri. ht of slavery by providing for the enumeration of slaves for the purpose of taxing them, and making the tax a lien on them as property.--See vol. 3, Laws of U. States, Bioren's edition, pages 34, 100, 102. The Eastern members of the Convention proposed it, they sustained it, and they moulded it to their mind. In 1798 and 1799, when it was necessary to resort to direct taxes to support the *quasi* war then waged against France, this species of population was taxed as property. The same sort of taxation was levied during the late war with England. This property has afforded revenue to carry on these wars; in the latter six hundred thousand dollars was annually received upon slaves.

By the Constitution, slaves are not only property as chattels, but political property, which confers the highest and most sacred political rights of the States, on the inviolability of which the very existence of Government depends.

The apportionment among the several States of their representatives in Congress.

The apportionment of direct taxes among the several States.

The number of electoral votes for President and Vice President, to which they shall be respectively entitled.

The basis of this right is, "according to their respective numbers, which shall be determined by adding to the whole number of free persons, *including those bound to service* for a term of years, and excluding Indians, not taxed, *three fifths of all other persons.*" So for all these great objects, five slaves are, in federal numbers, equal to one freeman of the North.

In that article of the Constitution, the word person is used as synonymous with "human being and inhabitant." The Constitution, in the second section of the first article provides that "representatives and direct taxes shall be apportioned among the several States according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound for a term of years, three-fifths of all other persons."

The word persons was unquestionably substituted for slaves. The words free persons, including those bound to service, embraces all the inhabitants or human beings of a State, save slaves; and the delicacy of the framers of the Constitution avoided sedulously the introduction of the word slave, and embraced them under the general term of other persons.

After the formation of the Constitution, it was objected to its ratification that slaves ought not to give to their masters an increased representation, for "slaves are considered as property, not as persons; they ought, therefore, to be comprehended in the estimates of taxation, as property, and be excluded from representation, which is regulated by a census of persons." In confirmation of these views, we refer to the 54th number of the Federalist, to show Mr. Madison's views in combating the objections taken by the non-slaveholders to that feature of the Constitution by which three-fifths of the slave population are added to the free population of a State in relation to its representation in Congress. In reply to this, he argued, in that number, that it was true that slaves were considered as property; but they were also considered as something more than property, they were considered as moral persons, liable to be punished for crime, as members of society.

Let us examine who fixed this apportionment. It was done by members of the Convention of the Eastern States. Mr. Randolph, of Virginia, proposed that the rights of suffrage ought to be proportioned to the quotas of contribution. Mr. Madison, of Virginia, made a proposition for an equitable ratio. It was then moved by Mr. Rutledge, seconded by Mr. Butler, to add to the words, "equitable ratio of representation," at the end of the motion just agreed, the words, "according to the quotas of contribution." On motion of Mr. Wilson, of Pennsylvania, seconded by Mr. Pinckney, of South Carolina, this was postponed, in order to add after the words, "equitable ratio of representation," the words following: "in proportion to the whole number of white or other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes, in each State." This was fol-

lowed by a proposition by Mr. Patterson, of New Jersey, of the same import. Upon revising this proposition with others, the Committee of Revision was Mr. Johnson, of Connecticut, Mr. Hamilton, of New York, Mr. Morris, of Pennsylvania, Mr. Madison, of Virgin a, and Mr. Rufus King, of Massachusetts. The committee adopted the propositions of Judge Wilson and Mr. Patterson, and formed that clause of the Constitution which regulates the representation and direct taxes.

The next compromise was between the small and large States. The one claimed and the other refused, an equality of suffrage in the national legislature. It was agreed that the suffrage should be equal in one house, and according to population in the other. This was the *basis* of the compromise. Then came the question, what should constitute the representative population? The Southern States had more slaves than the Northern, and the former insisted that slaves should be included in the representative population. This, it was contended in the Convention, would give the Southern States an unfair preponderance in Congress. To reconcile the North to slave representation, it was offered that direct taxation should be proportioned to representation. This arrangement of political power was acceded to. Mr. Davie, of North Carolina, made a "deliberate declaration:" "He was sure North Carolina would never confederate on any terms that did not rate them (the slaves) at least at three-fifths. If the Eastern States meant, therefore, to exclude them (the slaves) altogether, the business was at an end." [Madison Papers, p. 1081.] The compromise of three fifths of the slaves to be included in the representative population, was accepted on motion of a *New England member*.

It was attempted to exclude the Southern portion of the Confederacy from the right of representation of three-fifths of the slaves within the Union. It cannot be concealed, that this subject was surrounded by difficulties, and originally presented important impediments to the Union. It was contended then, that this unfortunate race of beings, degraded alike by intellect and condition, could not be considered above the animals which labored by their side; that they were not admitted by their owners to any share of political power in the States where they resided; that they could not, therefore, with propriety, be entrusted, by any participation in power, with the rights of freemen; that, in short, they should be *regarded as property, not as persons*.

It was then answered, that in the States not burdened with this species of inhabitants, the general principle of the confederation was, to apportion representatives among the States according to inhabitants: that if the Southern States choose to give their slaves the privilege of voting, or placed them on the footing of bound servants, they would be entitled to representation according to their full numbers; and that the refusal to their slaves of that privilege was like the qualification of property required in some of the States, a mere municipal regulation, with which the Union had no concern.

Thus reasoned the framers of the Constitution. They thought wisely, that slaves were to be partly as property, and partly as persons; and that it would be unjust to condemn their owners to taxation without some indemnity. They therefore compromised their conflicting opinions; they agreed to consider that three-fifths of this species of property should enter into the computation of representatives.

"The first thing objected to, is that clause which allows a representation for *three-fifths of the negroes*. Much has been said of the impropriety of representing men who have no will of their own. Whether this be reasoning or declamation, I will not presume to say. It is the unfortunate situation of the Southern States, to have a great part of their population, *as well as property*, in blacks. The regulation complained of was one result of the *spirit of accommodation which governed* the Convention; and without this indulgence, no Union could possibly have been formed." [See Alexander Hamilton's speech in the Convention of New York, to ratify the Constitution of the United States, Elliot's Debates, page 212.]

Messrs. King, Gore, Parsons, and Jones, of Boston, spoke of the advantage to the Northern States by the rule of apportionment given to them; as also Judge Dana. [See Elliott's Debates in the Massachusetts Convention.]

On the question of the adoption of these clauses of the Constitution, the vote stood thus:

Affirmatively—Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia—9. New Jersey, Delaware—2. [See 2 vol. Madison's State Papers.]

Mr. Patterson, of New Jersey, remarked, "He could regard slaves in no other light but as property."

Mr. Rufus King, of Massachusetts, said, "That eleven out of thirteen States had agreed to consider slaves in the apportionment of taxation."

CHAPTER XII.

Slaves recognised as Property by the Judiciary Act of 1789.

The great inquiry then is, whether a slave is private property? The slave is liable to be seized and sold for debts; if an individual attempt feloniously to take possession of him, the owner can recover him by an action of detinue or trover; to maintain either of which actions two things are necessary: first, that the object claimed should be a personal chattel; and next, that the party claiming should have a property in it. It is admitted, that it is the law of the United States. This we will endeavor to establish. By the thirty-eighth section of the Judiciary act it is enacted, that the laws of the several States, except where the Constitution, treaties, and laws of the United States otherwise require or provide, shall be "regarded as the rules of decision at common law in the Courts of the United States, in cases where they apply." What is this but adopting, as the laws of the United States, all the constitutional laws of the several States? Are they not, by this section, incorporated into, and made a part of the jurisprudence of the Union? Maryland, by a similar enactment, has made of force as much of the common law of England, as is consistent with her Constitution. Now, is not that common law of England made, by that enactment, as much a part of the code of Maryland as her legislative statutes? This proposition cannot be doubted. The *laws of the several States*, adopted by the Federal Courts, are as much then the laws of the United States as the act of Congress. In which light, then, have the courts of the United States considered slaves? Precisely as those of Maryland—as mere personal chattels—as legally, nothing more than goods, wares, and merchandize, and liable to all the rules which govern the possession and alienation of inanimate chattels. To prove this let us refer to a case originating in the Circuit Court of Georgia, but finally decided in the Supreme Court of the United States. [See the case of Williamson *vs.* Daniel, reported in the 12th vol. of Wheaton, page 568.] The substance of this case is as follows: A testator left by will sundry slaves to A and B, with a provision, if either should die without lawful heirs of his body, the survivor should have the estate. The following was the decree of the Court pronounced by Chief Justice Marshall: "We think these words convert the absolute estate previously given into an estate tail; and if so, *since slaves are personal property*, the limitation over them is too remote." It is an old maxim of the common law, that an estate tail cannot be created in a personal chattel; for if it be, the previous estate becomes absolute in the first taker. This rule applies to all property of a moveable nature—to money, goods, wares, and merchandise—to domestic animals, &c. Do not the above points establish the principle, that the Supreme Court of the United States view the slaves precisely in the same light as the State Courts—that it considered the slave no more than a personal chattel, in which an absolute property may vest, and liable to all the rules which attend chattels of that description. The same principles have been decided in another case brought up from the Circuit Court of Tennessee to the Supreme Court of the United States. [See Shelby *vs.* Grey, 11th Wheaton, page 361.] To understand this case it is only necessary to give the preliminary statement of Judge Johnson, who pronounced the decree of the Court. "The plaintiff here were defendants below in action of detinue, brought by Thomas Grey to recover sundry slaves. The defendants filed *non detinet*, and the act of limitations of the State of Tennessee, which was the act of detinue, is three years." Can it be contended, that slaves are not viewed by the Courts of the United States as private property, as nothing but personal chattels, by these two cases? In the first they are disposed of by will, liable to become the property of the first owner when the limitation over is after an indefinite period; and in the second case, they are recoverable by action of detinue, and become the absolute property by the holder after possession of three years. It is thus we find that the highest judicial authority known to the people of the United States have decided, that a slave is a legitimate chattel. So much for the decisions of the United States Courts on this subject. In these opinions every member of the bench concurred.

But let us now consider the light in which slaves have been viewed by Congress in levying a direct tax.

The acts of Congress relating to the assessment of lands, &c., and slaves, have been: "An act to provide for the valuation of lands and dwelling houses, and the enumeration

of slaves within the United States,'' July 9, 1798, ch. 70; "An act to amend an act entitled 'An act to provide for the valuation of lands and dwelling houses, and the enumeration of slaves within the United States,'" February 28, 1799, ch. 20; "An act supplementary to an act entitled 'An act to provide for the valuation of lands and dwelling houses, and the enumeration of slaves within the United States,'" January 2, 1800, ch. 3; "An act to provide for completing the valuation of lands and dwelling houses, and the enumeration of slaves in South Carolina, and for other purposes," January 30, 1805, ch. 11.

We will now advert to the act of 1813 imposing a direct tax. This act was ratified by James Madison. No man was better acquainted with all the provisions of the Constitution, their relations and dependencies, than this illustrious statesman. The 5th section of that act reads as follows: "That whenever a direct tax shall be laid by the authority of the United States, the same shall be assessed and laid on the value of all lands, lots of ground, with improvements, *dwelling houses and slaves*, which several articles subject to taxation, shall be enumerated and valued by the respective assessors *at the rate each of them is worth in money*."

Could Congress have employed words more emphatic, more minutely descriptive, to signify that a slave was private property, than are contained in the above section? Is there any distinction made in it *between lands and slaves? Each is liable to be taxed*, the tax is to be assessed on the value of each, and the value to be estimated by *the worth of each in money*.

Again: let us advert to the 24th section of the same act, and this idea is still more strongly expressed—is depicted in still more glowing colors. "That where any tax, as aforesaid, shall have remained unpaid for the term of one year, as aforesaid, the collector in the State where the propety lies, and who shall have been designated by the Secretary, as aforesaid, having first advertised the same for ninety days in at least one newspaper in the State, shall proceed to sell at public sale, so much of said property as may be necessary to satisfy the tax due thereon, together with an addition of twenty per cent. thereto. If the property advertised for sale cannot be sold for the amount due thereon, with the aforesaid additions, the collector shall *purchase the same in behalf of the United States* for the amount aforesaid."

Now, here Congress not only expressly admits that a slave is property, but directs the *collector to purchase* the slave in their behalf, if he is not bid up to the value of the tax imposed, and thereby becomes a slaveholder. The Congress of the United States, by the adoption of this act acknowledges, in the plainest and strongest language, that it will not only *tax slaves*, or other property, but that it will sell and purchase them.

On the passage of the bill it was determined in the affirmative, yeas 27. Those who voted in the affirmative from the non-slaveholding States are, Chase, of Vermont; Condit, of New Jersey; Gorman, of New York; Gore, of Massachusetts; Howell, of Rhode Island; King, of New York; Lacock, of Pennsylvania; Morrow, of Ohio; Varnum, of Massachusetts; Robinson, of Vermont. [See Senate Journal, 1st session 13th Congress, page 105.]

On the passage of the same bill in the House of Representatives, those who voted in the affirmative from the non-slaveholding States are, Comstock, Denoyelles, Fisk, and Sage, of New York; Davis, Crawford, Findley, Conrad, Chas. J. Ingersoll, Ingham, Rea, Seybert, Smith, and Wilson, of Pennsylvania; Fisk, of Vermont; and John McLean, of Ohio. [See House Journal, 1st session 13th Congress.]

The extradition of criminals or slaves, escaping from one country to another, has generally been considered a matter of comity and not of right. There is no general principle in the laws of nations which would require a surrender in such a case. The remarks of the Supreme Court, in regard to the surrender of captured slaves, in the Amistad case, were made with a reference to our treaty with Spain.

This Government is under no obligation, nor has it the power to surrender, on the demand of any foreign Government, any individual, unless such surrender is stipulated by treaty; nor is any such inhabitant punishable by the laws of the United States for acts committed beyond their jurisdiction, the case of pirates alone excepted. This is a fundamental rule of our system. It is not, however, confined to us; it is believed to be the law of all civilized nations, where not particularly void by law.

In support of these views and principles see 4 Johns. ch. rep. p. 106; United States *vs.* Davis, 2 Sumner, p. 482, per Justice Story; Writings of Jefferson, 3 vol. p. 131; 1 vol. Am. State Papers, p. 145; and 2 Brock. p. 504; 14 Peters S. C. Rep., p. 574, Holmes *vs.* Jansen.

The stipulation in the Spanish treaty, by which we were bound to restore the ships and effects or merchandise of Spanish subjects, when captured within our territorial jurisdiction, or by pirates on the high seas, applies to the surrender of slaves by the States. Here is a solemn compact between sovereign powers, not less sacred, than the constitutional compact between the States stipulating for the restoration of *slaves or merchandise*.

We were bound to deliver up the slaves according to the treaty of 1795 with Spain, which has, in this particular, been continued in full force by the treaty of 18 9, ratified in 1821. The ninth article provides, "that all ships or merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either State, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietors, as soon as due and sufficient proof shall be made concerning the property thereof." In exposition of this article of the treaty, Judge Story says: "If these negroes were, at the time, lawfully held as slaves under the laws of Spain, and recognized by those laws as property capable of being lawfully bought and sold, we see no reason why they may not justly be deemed within the *intent* of the treaty, to be *included under the denomination of merchandise, and as such ought to be restored* to the claimants; for, upon that point, the laws of Spain would seem to furnish the proper rule of interpretation." See The United States *vs*. The Amistad, 15 Peters, 593.

In construing this clause of the treaty, the Attorney General says that "this case is clearly within the spirit and meaning of the 9th article, and that the VESSEL AND CARGO SHOULD BE RESTORED ENTIRE, as far as practicable. See Gilpin's opinion—Attorney General's opinion in the Amistad case.

Let us see who voted for the ratification of these treaties.

THURSDAY, MARCH 3, 1796.

The Senate resumed the consideration of the treaty between the United States and His Catholic Majesty.

On motion that the Senate agree to the following resolution,

Resolved, (two thirds of the Senators present concurring therein,) that the Senate do advise and consent to the ratification of the treaty between the United States and his Catholic Majesty, concluded on the 27th of October, 179 .

On the question to agree to the resolution, yeas 26. Those who voted in the affirmative are, Bingham, of Pennsylvania; Bloodworth, of North Carolina; Bradford, of Pennsylvania; Brown, Burns, of New York; Butler, Cabot, of Massachusetts; Ellsworth, of Connecticut; Foster, of Rhode Island; Henry Martin, King, of New York; Langdon, Latimer, Livermore, of New Hampshire; Martin, Mason, Paine, Potts, Robinson, of Vermont; Ross, of Pennsylvania; Strong, of Massachusetts; Tazewell, Trumbull, Connecticut; Vining and Walton.

On the motion to ratify the treaty of 1819, Messrs. Burrill, Daggett, Dana, Dickinson, Edwards, King, of New York, Lacock, Miller, Morrow, Noble, Otis, Roberts, Sanford—all from non-slaveholding States. [See Executive Journal, vol. 3.]

FEBRUARY 15, 1821—THE TREATY OF 1821.

On the question, will the Senate advise and consent to the ratification of this treaty, it was determined in the affirmative:

Those who voted in the affirmative from non-slaveholding States are, Chandler, of Maine; Dana, of Connecticut; Durham, of New Jersey; Edwards, of Connecticut; Coleman, of Maine; Hunter, of Rhode Island; King, of New York; Knight, of Rhode Island; Lanman, of Connecticut; Lowrie, of Pennsylvania; Mills, of Massachusetts; Morrill, of New Hampshire; Noble, of Indiana; Otis, of Massachusetts; Palmer, of Vermont; Parrott, of New Hampshire; Roberts, of Pennsylvania; Ruggles, of Ohio; Sanford, of New York; Southard, of New Jersey. See Executive Journal, vol. iii, page 178.

At an antecedent period in the history of this country analagous principles prevailed and controlled the action of the Congress of the United States as regards slaves being considered as *merchandise*.

The word *merchandise* is *nomen generalissimum*, and comprehends every description of property. It is the appellative which will take in the whole species, if there be nothing to narrow its scope. There is no such limit. There is not a syllable in the context of the 9th article to restrict the natural import of its phraseology. The word merchandise is left to the force of its generic signification, and is, therefore, as extensive

as personal property can be. It embraces all the descriptions of property which it could be supposed this Government could find it necessary to incorporate in our system of laws. It covers the whole ground which appertains to the recognition of slaves as property. These views seem to be supported by the action of Congress in 1792.

On the 19th day of April, 1792, the Constitution of the State of Kentucky was formed. On the 6th of November, 1792, General Washington, then President of the United States, delivered his annual address to the two Houses of Congress, in which he said: "The adoption of a constitution for the State of Kentucky has been notified to me. The Legislature will share with me the satisfaction which arises from an event interesting to the happiness of the part of the nation to which it relates. and conducive to the general order." And on the succeeding day he transmitted to the two Houses of Congress, in a special message, "a copy of the constitution formed for the State of Kentucky."

On the 9th of November, 1792, the Senate of the United States responded to the address of the President, in which they say, "the organization of the Government of the State of Kentucky, being an event peculiarly interesting to a part of our fellow-citizens, and conducive to the general order, affords us peculiar satisfaction." On the 10th of November, 1792, the House of Representatives responded through a committee, of which Mr. Madison was chairman, to the address of the President, in which they say: "The adoption of a Constitution for the State of Kentucky, is an event in which we join in all the satisfaction you have expressed. It may be considered as particularly interesting, since, besides the immediate benefits resulting from it, it is another auspicious demonstration of the facility and success with which an enlightened people are capable of providing, by free and deliberate plans of government, for their own safety and happiness." This constitution contains a provision that "they (the Legislature) shall have full power to prevent slaves from being brought *into this State as merchandise.* [1 Littell's Laws of Kentucky, 52] Hence is this constitution, with this clause recognising *slaves as merchandise*, thus solemnly sanctioned, almost cotemporaneously with the organization of the Federal Government, by George Washington, President of the Convention which formed the Constitution of the Union, and by John Langdon and Nicholas Gilman, of New Hampshire; Rufus King and Eldridge Gerry, of Massachusetts; Roger Sherman and Oliver Ellsworth, of Connecticut; Jonathan Dayton, of New Jersey; and Robert Morris and Thomas Fitzsimmons, of Pennsylvania. It must be remarked, that they were members of the Convention which framed the Constitution of the United States, and all of them sanctioned and adopted the constitution of the State.

On the 1st of March, 1817, an act of Congress was passed to enable the people of the western part of the Territory of Mississippi "to form a Constitution and State Government." [6 Laws United States, 175.] On the 4th of December, 1817, this Constitution *was submitted to both Houses of Congress*; [See Senate Journal, page 21; House Journal, 21;] and on the 10th of December, 1817, the State was received as a member of the Union; this constitution contained the clause, that "they (the Legislature) shall have full power to prevent slaves from being brought into this *State as merchandise.*" The constitution of the State of Missouri was formed on the 19th day of July, 1820, in pursuance of an act of Congress of the 6th of March, 1820. [See 6th vol. Laws of the United States, 455.] This constitution contained the following among other provisions: first, the General Assembly shall not have power to pass laws for the emancipation of slaves without the *consent of their owners*; but they shall have the power to prohibit the introduction of any slave for the purpose of *speculation, or as an article of trade or merchandise.* On the 2d of March, 1821, Congress passed a joint resolution providing for the admission of the State of Missouri into the Union. [See 6 vol. Laws of the United States, 390.]

On the 30th of January, 1836, the people of the Territory of Arkansas formed a constitution which contained the following clause: "They (the Legislature) shall have power to prevent *slaves from being brought to this State as merchandise.*" On the 10th of March, 1836, this constitution was "submitted to the consideration of Congress," in a special message by the President. [Senate Journal, 210.] On motion of Mr. Buchanan, of Pennsylvania, in the Senate, on the same day, it was referred to a Select Committee. On the 22d of March, 1836, Mr. Buchanan, as Chairman from the Select Committee, reported a bill for the admission of Arkansas as a State, under the constitution submitted by the President; and after a full discussion, the bill passed the Senate *by a vote of thirty one to six*, fifteen of those who voted in the affirmative being from non-slaveholding States, and four of those who voted in the negative being from

the non-slaveholding States. Such were the proceedings in the Senate; and in the House the Constitution of Arkansas was submitted, and she was admitted as a State on the 13th of June, 1836, by a vote of 143 to 50. [House Journal, 1003.] Nor was the matter passed by in silence; for whilst the bill was pending, Mr. Adams moved to strike out from the bill that portion of it in regard to slaves and slavery, (p. 997,) but it was not seconded; and the constitution of Arkansas was confirmed and accepted, with this clause included.

Here, then, are several States, whose Constitutions were adopted by Congress, and admitted at all those periods, with clauses in all of them, as to the exclusion of slaves as merchandise. Is not this a full recognition of the principles for which we have contended in regard to this species of property?

But this is not all. A more recent act of Congress may be adverted to as settling the question as to property in slaves. Persons formerly in the reputed limits of the United States, but according to the demarcation of the boundary line between the United States and the Republic of Texas, were found to reside, in 1840, within the limits of Texas, were allowed, by an act of Congress, to remove with all their "*moveable property into the United States.*" Approved June 15, 1844. See United States Statutes at Large, vol. v, p. 674.

According to our analysis of this act of Congress, the terms "*moveable property*" *included slaves.* Furthermore, it authorized the importation of slaves from a foreign territory. This act was passed before the annexation of Texas to the United States.

We will now animadvert upon a negotiation which produced considerable excitement in the Southern part of this Confederacy, and which threatened to disturb our friendly relations with Great Britain.

The Executive of the United States sanctioned the right of slavery when they negotiated and concluded a treaty stipulating an indemnity for the slaves carried into British colonial ports

In 1830, two American vessels, the Comet and Encomium, freighted with slaves, were carried by irrepressible necessity, into British colonial ports. The slaves on board of these vessels were protected by the British authorities, and left at full liberty to go on to their destined port and fate, or to remain where they were. A large portion of them chose the latter course. A demand for indemnity was urged upon the British Government, which, after much delay and negotiation, at last announced its intention to make compensation for the slaves. [See Senate Documents, 1838, 1839, vol. iii, No. 216.]

The argument in favor of the indemnity rested upon the fact that the negroes were carried to Nassau by an irrepressible necessity, and that being characterized as property by the American law, that character, under that law, ought to remain attached to them; and that, by the law and comity of nations, the owners were entitled to British aid in securing their property, and that the authorities had no right to interfere in behalf of the slaves.

Lord Palmerston resisted the indemnity upon the ground that slaves, coming within British jurisdiction, they being persons, acquired rights inconsistent with the claims of the owners, which rights the British Government is bound to respect. [See Lord Palmerston's letter to Mr. Stevenson, January 7, 1837, Senate Documents, 1838, 1839, vol. iii. 216, p. 14.]

These principles were denied by Mr. Forsyth, who was Secretary of State during the administration of Mr. Van Buren. He contended "that the question of property must be decided by some other law than the municipal law, to which the owner has never submitted himself." [See Senate Documents, 1838, 1839, vol. 3, No. 216, p. 5.] Mr. Stevenson, minister to the Court of St. James, also declared that it was necessary to show, before the British position can be supported, "that human beings cannot be the subject of property any where, or to any extent." [Ibid, p. 19.] The Secretary of State further maintained that the United States would assert the same rights, in cases like the present, in the ports of England, as in those of her colonies. Such are the views, as advanced by Mr. Van Buren, through the officers of the Government selected by him to conduct the negotiation to a successful termination, and to receive *indemnity for slaves* then under the jurisdiction of Great Britain. Now, what is this claim for indemnification but an assertion of the right of property on the part of the owners? The right of property is the basis of the claim. If the functionaries of the colonial ports had surrendered the negroes, no claim for compensation could be established against the English Government. In other words, they claimed the surrender of the negroes; failing in that, they claimed indemnity.

Extracts from Mr. Van Buren's Despatch.

"Should it, however, be decided that His Majesty's Government is unable to comply with this request, in consequence of the actual landing of the slaves on the Island of New Providence, through the *illegal seizure of them* by the custom house officers, and of the application to their case of the general principles of the English law; or should it be declared that it was the intent of the act of Parliament, through *motives of humanity, to give freedom to every slave landing on the coast of the British colony*, whether cast upon it by *shipwreck, or brought thither* by design, or without *reference to his previous condition, or the manner in which the owner's interest in him was acquired*, the undersigned is persuaded that the justice of the British Government will *take care that the property of the citizens of a friendly nation*, thrown by shipwreck on their coast, shall not, under circumstances like those of the present case, be sacrificed by any misconstrued application of British laws, or by any *indulgence of their own feelings of philanthropy;* but that *all suitable compensation will be made to such individuals for the property taken or detained from them.*

"The claimants will not require that any implied faith to the slaves by the act of the Governor of the Bahamas shall be violated; they will, therefore, be content with a *moderate valuation*, much less than that put upon the slaves by the Legislative Assembly of New Providence." [See Senate Documents, 2d Sess., 24th Cong., vol. 2, No. 174.]

From a fair analysis of this correspondence, it appears that Mr. Van Buren relied on the doctrines that prevailed in the English Admiralty Courts, in adjudicating upon the right of property acquired by the prosecution of the slave trade. This, it may be remarked, is the principle which has always been contended for by those who own this species of property. It must be conceded, that this kind of property owes its existence to the municipal laws of the State in which slavery is tolerated or sanctioned; accordingly it has been decided by the Admiralty Courts, that where ships of other nations engaged in the slave trade have been captured by British cruisers, if the slave trade was allowed by the laws of the nation to which the vessel belonged, the vessels and slaves have been *restored to the owners.* [The Amelie, 1 Acton, 240; the Fortunal, 1 Dodson, 81; the Diana, 1 Dodson, 95; Le Louis, 2 Dodson, 238; Madrago *vs.* Willes, 3 Barr. & Ald., 358; 1 Mason, 45. See, also, the Antelope, 11 Wheaton.] These adjudications are based upon the laws of nations. What are the principles established by this correspondence? They are reducible to two heads: 1st. That slavery is recognised in this country as a legal institution. 2d. That the cargo of slaves on board of the Comet and Encomium, having reached a foreign jurisdiction which declared them free, the colonial authorities should have restored them to their owners or the insurance offices located in New Orleans, because they belonged to a section of country which sanctioned the institution of slavery. Then let us apply this doctrine to property belonging to the South, and seeking shelter and protection in adjacent communities. Before the establishment of the Constitution, the right of a slave wherever found existed in the common law, or customary law, of nearly every State in the Union; for all the States, excepting only Massachusetts, then recognized slavery as a legal institution existing within their borders, the subject of it as property. The owner then might follow and seize his slave and take him away, as he might seize and take his horse, or any other article of personal property. Now the effect of the constitutional provision allowing the recapture of fugitive slaves, and we may infer its object, was two fold. It extended this right of recapture, which existed by the common law of most of the States, to all of them, and prohibited any from changing or modifying it by legislation. If Mr. Van Buren was justifiable in demanding these slaves upon the ground of national comity, have not the South the same principles to rely on, when they claim the exercise of a power of demanding of a sister the surrender of their property under the constitutional compact?

This doctrine has the authority of the highest Courts of Judicature in Great Britain and of the Supreme Court of the United States; and is sanctioned by the authority of the most eminent judges and civilians in this or the mother country, including Sir William Scott and Chief Justice Marshall. It is recognised by the State Legislatures, (including Pennsylvania) who before the existence of the Federal Constitution abolished slavery; by the act of Parliament of 4 & 5 William, 1833, abolishing slavery in the West Indies; by the writers on the Civil Law; by Vattel in his Treatises on the Laws of Nations, [B. 2, chap. vi. page 160;] and by Mr. Wheaton in his Treatise on International Law, [part 4, chap. i. page 339–40, id. 177 to 187.]

CHAPTER XIII.

Slaves recognised as Property by the ratification of the Treaty of Peace at Ghent, and the stipulations contained in said Treaty, as regards the restoration of Slaves.

The British Government stipulated, in the Treaty of Ghent, to restore the property which she had taken during the war, and which remained in the United States at the ratification. But, in defiance of the treaty, she carried away such slaves as she had allured to her, or captured, as remained in the United States at the period of the ratification. It was contended on the part of the British Government, that the slaves which had been carried away *were lawful* prize of war, and we had no *right to demand restitution.* In consequence of this violation of treaty, the United States claimed, in behalf of her citizens, an indemnity for the slaves which she had thus deported. The British Government refused to make compensation, on the ground that slaves were not embraced in the meaning of the treaty, and the subject was at length referred to the Emperor of Russia, who decided THAT THE SLAVES that remained in the United States at the date of the ratification of the treaty, should be paid for; and a mixed commission was established, to ascertain the number and value of the slaves which had been carried away, and to award the amount to the claimants. The board organized under the mediation of the Emperor of Russia, met, fixed the value of the slaves, but some disagreement took place on the part of the British commissioner, who refused to proceed any further in the mode provided in the treaty. The Government of the United States then represented the real state of the case to the British Government, and a treaty was finally concluded by which the latter agreed to pay $1,200,000 to the United States, in full of all claims under this article of the treaty, which sum the Government received and distributed among the claimants who were legally entitled to receive it; that is, to *those whose slaves had been carried away* in violation of treaty stipulation.

Extract of Mr. Monroe, Secretary of State, to the American Plenipotentiaries at Gottenburg:

"DEPARTMENT OF STATE, *January* 28, 1814.

"It is equally proper that the negroes taken from the Southern States should be returned to their owners, or paid for at their full value. It is known that a shameful traffic has been carried on in the West Indies, by the sale of these persons there, by those who professed to be their deliverers. * * * * * If these slaves are considered as non-combatants, they ought to be restored; if as property, they ought to be paid for. The treaty of peace contains an article which recognizes this principle."

Let us investigate the question, Who sustained this treaty, containing, as it does, a provision for the restoration of slaves then in the possession of a foreign power?

Executive Journal, February 16th, 1815, 3 *vol.*

The treaty of peace and amity between the United States of America and Great Britain, and the resolution to ratify the same, were read the third time.

On the question, Will the Senate advise and consent to the ratification of the treaty? it was unanimously determined in the affirmative, yeas 35.

Those who voted are, Messrs. Anderson, Barbour, Barry, Bibb, Brown, Chase, of Vermont; Daggett, Dana, of Connecticut; Fremontin, Gaillard, German, of New York; Giles, Goldsborough, Gore, of Massachusetts; Horsey, Howell, Hunter, of Rhode Island; Kerr, of Ohio; King, of New York; Lacock, of Pennsylvania; Lambert, of New Jersey; Mason, Morrow, of Ohio; Roberts, Pennsylvania; Robinson, Smith, Talbot, Tait, Thompson, of New Hampshire; Turner, Varnum, Massachusetts; Wells Wharton.

By the 5th article of the Convention, concluded on the 20th of October, 1818, it was stipulated that the differences which had arisen between the two Governments, with regard to the true intent and meaning of the 5th article of the treaty of Ghent, in relation to the carrying away, by British officers, of slaves from the United States, after the exchange of the ratifications of the treaty of peace, should be referred to some friendly Sovereign or State, to be named for that purpose.

THURSDAY, DECEMBER 10, 1822.

"*To the Senate of the United States:*

"I transmit herewith to the Senate, for their constitutional consideration and decision thereon, a convention between the United States and Great Britain, concluded at St.

Petersburg, on the 12th day of July last, under the mediation of his Imperial Majesty of all the Russias, together with the documents appertaining thereto, and which may elucidate the motives for its negotiation, and the objects for the accomplishment of which it is intended.

"*December* 4, 1832. JAMES MONROE."

FRIDAY, JANUARY 3, 1823.

The Convention with Great Britain was read the third time, and the resolution for the ratification thereof having been agreed to,

On the question, Will the Senate advise and consent to the ratification of this Convention? it was unanimously determined in the affirmative, yeas 40.

Those who voted are, Messrs. Barbour, Barton, Benton, Boardman, of Connecticut; Brown, of Louisiana; Brown, of Ohio; Chandler, of Maine; D'Wolf, of Rhode Island; Dickerson, of New Jersey; Edwards, of Illinois; Findley, of Pennsylvania; Holmes, of Maine; Holmes, of Mississippi; Johnston, of Louisiana; Johnston, of Kentucky; King, of Alabama; King, of New York; Knight, of Rhode Island; Lanman, of Connecticut; Lloyd, of Massachusetts; Lowrie, of Pennsylvania; Macon, Mills, of Massachusetts; Morril, of New Hampshire; Palmer, of Vermont; Parrott, of New Hampshire; Rodney, Ruggles, of Ohio; Seymour, of Vermont; Smith, of Maryland; Smith, of South Carolina; Stokes, Talbot, of Indiana; Taylor, of Virginia; Thomas, of Illinois; Williams, of Mississippi; Williams, of Tennessee.

Extract from Message of Mr. Adams to both Houses of Congress, December 6, 1825.

"The other commission appointed to ascertain the *indemnities due for slaves carried away* from the United States, after the close of the late war, have met with some difficulty, which has delayed their progress in the inquiry."

Extract from John Q. Adams' Message.

"WASHINGTON, DECEMBER 20, 1826.

"In the message to both Houses of Congress, at the commencement of their present session, it was intimated that the commission for liquidating *the claims of our fellow-citizens to indemnity for slaves* or other property, carried away after the close of the late war with Great Britain, in contravention to the first article of the treaty of Ghent, had been sitting in this city, with doubtful prospects of success, but that propositions had recently passed between the two Governments, which it was hoped would lead to a satisfactory adjustment of that controversy.

"I now transmit to the Senate, for their constitutional consideration and advice, a Convention signed at London, by the Plenipotentiaries of the two Governments, on the 13th of the last month, relating to this subject."

The Senate proceeded to consider the Convention, and no amendment having been made thereto, it was reported to the Senate accordingly.

Mr. Sandford, of New York, submitted the following resolution:

Resolved, (two-thirds of the Senators present concurring,) That the Senate advise and consent to the ratification of the Convention between the United States and the United Kingdom of Great Britain and Ireland, concluded at London, on the 13th day of November, 1826.

The Senate proceeded to consider the resolution by unanimous consent. On the question to agree thereto, it was determined in the affirmative.

Those who voted are, Messrs. Barton, Bell, of New Hampshire; Benton, Berrien, Bouligny, Branch, Chandler, of Maine; Clayton, Dickerson, of New Jersey; Edwards, of Connecticut; Findlay, of Pennsylvania; Harrison, of Ohio; Hayne, Hendricks, of Indiana; Holmes, of Maine; Johnston, of Louisiana; Kane, of Illinois; King, Macon, Marks, of Pennsylvania; McMinley, Reed, Robbins, of Rhode Island; Rooney, Sandford, of New York; Seymour, of Vermont; Silsbee, of Massachusetts; Smith, of Maryland; Tazewell, Thomas, of Illinois; White, Williams, Woodbury, of New Hampshire. Executive Journal, vol. iii, p. 554.

This Convention, concluded at London, had the effect to settle the difference between the American and British Governments, under the treaty of Ghent, by which the *execution of the provision for indemnity for deported slaves* had been for some time delayed. This Convention, entered into by Mr. Gallatin with the British Government, and *negotiated under the auspices of Mr. Adams, and ratified by the whole representation in the Senate coming from non-slaveholding States, fixed the compensation to be paid for slaves.*

Indemnification is only another form of restitution; a mode of paying liquidated damages where property has been violated; and the subject cannot be restored *in specie,* and can only be claimed when the wrong complained of is admitted as proved. The right to compensation, in the eye of the treaty, was just as perfect as the right to the surrender of the negroes. So thought the Senate of the United States. They also considered the right of indemnity as *travelling with the right of property.* Indeed, they have always been considered property in all of our diplomatic relations with foreign powers, and in the most solemn international acts, from 1782 to 1838.

Great Britain has granted indemnification on account of this species of property in two instances; first, for slaves captured on our own territory during the last war; secondly, because slaves have escaped to her colonies. In the last instance she considered herself estopped by her own practice to deny the right of property in slaves; and, therefore, not being willing to restore slaves *in person,* she granted indemnification. The Federal Government has proceeded upon the above principles in granting indemnity for the destruction of this species of property, where it had been pressed into the service of the United States Army.

The bill for the relief of Francis Larche, of New Orleans, was considered by the Senate. Mr. Ruggles, of Ohio, argued that this bill had two or three times passed the Senate, but had never been fully acted upon in the other House. The circumstances of the claim are these: The negro slave of the petitioner was impressed into the service of the United States during the last war, and was employed in the transportation of baggage. Whilst in this service he was killed by a cannon ball from the enemy. The facts had been proved to the satisfaction of the committee; *and as slaves were recognized as property* by the war, the petitioner was, in the opinion of the committee, entitled to relief. The bill was ordered to be engrossed for a third reading. [See Congressional Debates, part 1, vol. 4, page 35. See also the case of Marigny D'Auterive.] This was a private bill providing for remunerating the claimant for the lost time of a slave impressed into the service of the United States at New Orleans, and who was wounded.—[Part 1, vol. 4, p. 899.] The indemnity in these cases was predicated on the principle that slaves were property.

Before we conclude our views in relation to the recapture of fugitive slaves, let us advert to the legislation on this subject.

IN CONGRESS, FRIDAY, SEPTEMBER 21, 1781.

On the recapture by a citizen of any negro, mulatto, Indian, or other person from whom *labor* or *service* is lawfully claimed by another citizen, whether the original capture shall have been made on land or water, a reasonable salvage being paid by the claimant to the re captor, not exceeding one fourth part of the value of such labor or service, to be *estimated according to the laws of the State of which the claimant shall be a citizen; but if the service of such negro, mulatto, Indian, or other person,* captured below high water mark, shall not be legally claimed by a citizen of these United States, he shall be set at liberty. The yeas and nays being required, passed unanimously. [See Journal of Congress, vol. 6, page 103.]

IN CONGRESS, JULY, 1787.

An Ordinance for the Government of the Territory of the United States northwest of the river Ohio.

ART. 6. There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided always,* that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and carried to the person claiming his or her labor or service as aforesaid. [See 1 vol. Laws of United States, Bioren's edition, page 480.]

On passing the above ordinance, the yeas and nays being required by Mr. Yates, those who voted in the affirmative are, Messrs. Hilton and Dana, of Massachusetts; Smith, Harving, and Yates, of New York; Clarke and Scheuremon, of New Jersey; Kearney and Mitchell, of Delaware; Grayson and R. H. Lee, of Virginia; Blount and Hawkins, of North Carolina; Kean and Hugh, of South Carolina; Few and Pierce, of Georgia.

So it was resolved in the affirmative by a unanimous vote. [See Journals of Congress, vol. 4, from 1774 to 1788.] This ordinance has been decided to be constitutional and valid. [See 5 Peters, p. 504]

An Act concerning the District of Columbia.

SEC. 6. *And be it further enacted*, That in all cases where the Constitution or laws provide that criminals or fugitives from justice, or persons held to labor in any State, escaping into another State, shall be delivered up, the Chief Justice of the said District shall be, and he is hereby empowered and required, to cause to be apprehended and delivered up such criminal, fugitive from justice, or person fleeing from service, as the case may be, who shall be found within the District, in the same manner, and under the same regulations as the executive authority of the several States are required to do the same; and all executive and judicial officers are hereby required to obey all lawful precepts or other process issued for that purpose, and to be aiding and assisting in such delivery.—*Approved by John Adams, March* 3, 1801. [See United States Statutes at Large, vol. ii, page 116.]

Those who voted for the bill from the non-slaveholding States are, Christopher Champlin, of Rhode Island; Franklin Davenport and Jas. H. Imlay, of New Jersey; William Cooper and Henry Glen, of New York; Abriel Foster, of New Hamphire; Jonathan Sim and Chauncey Goodrich, of Connecticut; Levi Lincoln, Harrison G. Otis, and Peleg Wadsworth, of Massachusetts; and Robert Waln, of Pennsylvania. [See House Journal, 5th and 6th Congress, page 820.]

By the act of 26th March, 1804, "creating Louisiana into two territories, and providing for a temporary Government," we also find a provision for the recapture of "fugitive slaves, escaping from service of their masters." [See Laws of the United States, Bioren's edition, vol. 3., chap. 391, sect. 6.]

COMPROMISE PROVISION RESPECTING SLAVERY.

An Act to authorize the people of the Missouri Territory to form a Constitution and State Government.

SEC. 8. *And be it further enacted*, That all that Territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always, That any person escaping into the same, from whom service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully claimed and conveyed to the person claiming his or her labor or service as aforesaid.—Approved March* 6, 1820. [See United States Statutes at Large, vol. 3, 548.]

This section was an amendment to the bill, and was agreed to without a division. [See Senate Journal, 1st Sess. 16th Cong., 201.]

In pursuing our historical reminiscences in relation to the legislation of Congress, we will advert to the effort made to abolish slavery in the District of Columbia, as early as 1805. It will be perceived, that the resolution submitted to that body is somewhat analagous to the provisions of the Pennsylvania act of 1780, which abolished slavery in that State.

FRIDAY, JANUARY 16, 1805.

Resolved, That from and after the fourth of July, one thousand eight hundred and five, all blacks and people of color that shall be born within the District of Columbia, or whose mother shall be the property of any person residing within said District, *shall be free—the males at the age of* ———, *and the females at the age of* ———.

The question being taken, that the House do agree to the said motion, as proposed, it passed in the negative—yeas, 31; nays, 77.

Those who voted in the negative from the non-slaveholding States are, Frederick Conrad, Joseph Heister, and John Stewart, of Pennsylvania; Jacob Crowenshield, William Eustis, and William Stedman, of Massachusetts; John Davenport, Colvin Goddard, and Roger Griswold, of Connecticut; Adam Boyd, James Moot, and Henry Southard, of New Jersey; Henry W. Livingston, Henry Riker, Philip Van Cortland, William K. Van Rensselaer, and Daniel C. Verplanck, of New York; Gideon Olin, of Vermont; and Samuel Tenney, of New Hampshire. [See House Journal, 8th and 9th Congress, vol. 5, pp. 94, 95.]

Congress recognized slavery when North Carolina ceded a portion of territory to the United States. By the adoption of an act to accept a cession of claims of the State of North Carolina to a certain district of western territory, it is provided, "that no regulations made, or to be made by Congress, *shall tend* to emancipate slaves." [See 6 vol. United States Statute at Large, page 108. *Approved, April* 2, 1790.]

By the act prohibiting the importation of slaves into any port within the jurisdiction of the United States, it provided by the 9th section, that all vessels sailing coastwise, having on board any negro, mulatto, or person of color, for the purpose of transporting them to be sold or *disposed of at sales*, or to be held to service or labor, shall, previous to the departure of such ship or vessel, make out and subscribe duplicate manifest of any such negro, mulatto, or person of color on board of such ship or vessel. [See United States Statutes at Large, 2 vol. page. 429. *Approved March* 2, 1807.]

THURSDAY, DECEMBER 27, 1827.

Mr. Van Buren, from the Committee on the Judiciary, to whom was referred the petition of Richard H. Wilde, of Georgia, reported a bill to authorize the cancelling of a certain bond therein mentioned; which was read, and ordered that it pass to a second reading.—[See Senate Journal, 1st Sess., 20th Cong., p. 60.]

From the memorial in the foregoing case, it appeared that the Antelope was a vessel unquestionably belonging to Spanish subjects, was captured while receiving a cargo of Africans on the coast of Africa, by the Arraganta, a privateer which was manned in Baltimore, and sailed under the flag of the Oriental Republic. That it appeared, also, that the negroes (thirty-nine in number,) were a part of a cargo of negroes found on board of a Spanish vessel which was captured by a revenue cutter of the United States, sent into Savannah, and libelled for an alledged violation of the slave acts of the United States. The Spanish Consul set up a claim to the vessel and cargo, as the property of Spanish subjects; the Portuguese Consul set up a claim in behalf of certain subjects of Portugal; and the captain of a privateer, sailing a South American, advanced another claim. Upon investigation, it was found that the negroes had been plundered from several Spanish and Portuguese ships by a South American privateer. The suits growing out of these claims were prosecuted in different courts of the United States. The claimants were required to give bond, with security, *for the removal of the negroes* from the United States. The memorialist purchased the negroes from the claimants for the sum of fifteen thousand dollars.

The purchaser then applied to the Congress of the United States for the cancellation of the bond which had been given by the claimants for the removal of the negroes from the United States, in order that they might remain in the State of Georgia. It must be remarked, that the negroes were adjudicated to the claimants. Mr. Wilde becomes the purchaser of the negroes, by giving a stipulated sum of money, and the bond executed for the removal of the negroes from the United States, is, by an act of Congress, cancelled. Is not this bill of Mr. Van Buren's an express recognition of *the validity of the sale of the negroes*, and that *he recognised slaves as property?* This bill is predicated on the principle that the purchase by Mr. Wilde required the legislation of Congress to impart to the transaction validity. Without such an act, the sale to Mr. Wilde by the claimants would not have been sustained; because under the acts of Congress prohibiting the importation of slaves, the claimants were bound under the obligations of their bond, to remove them beyond the jurisdiction of the United States. This act of Congress accomplished more than the establishing the validity of the sale, it sanctioned the *importation into the United States*, to be held in slavery, in relaxation of the law of 1807, which is prohibitory of such importation. These negroes were in the custody of the law when this sale was effected; they were not legally imported into the United States, and the effect of cancelling the bond executed by the Spanish claimants to the United States, for their removal, was simply to allow a transaction in violation of the provisions of the acts of Congress, or to legalize the importation. [See 6 vol. U. S. Statutes at Large] This act cancelling the bond was approved by John Q. Adams. [See Session Acts, 1828.]

CHAPTER XIV.

Laws and Decisions of the non-slaveholding States respecting the institution of Slavery, and Fugitives from Labor.

PENNSYLVANIA.

At an early period the question of the existence of slavery in Pennsylvania was considered, and that *slaves were property* there, was unanimously pronounced after the most elaborate arguments in the highest judicial tribunals in that State.

By the act of Pennsylvania, of the 29th March, 1780, and the act of 1st March, 1788, explained or amended by the last act, *all negroes born after the passage of the act were to be free; but the slaves then born and living in the State were continued in slavery and to be registered.* No slaves could be introduced for sale, or exported for *sale;* and all who were brought in, except by sojourners for six months, and members of Congress for temporary residence during the session of Congress, were declared free. [Purdon's Dig., 555, 597, 1 Dal. L, 838; 1 Smith, 692; 2 Dal. L., 536; 2 Smith, 443.] Children born after the passage of the act of 1780, subject however to a temporary servitude [See Miller vs. Dowling, 14 Sergeant & Rawle, 442.]

It has been announced by the Court of Errors and Appeals in that State, in the case of negro Flora *vs.* Greensbury, at March term, 1798, "that it was their unanimous opinion slavery was not inconsistent with any clause in the Constitution of Pennsylvania," and conformably to this opinion the entry of the record is, "the Court is unanimously of the opinion, that negro Flora is a *slave*, and that she is the *property* of defendant in error, and the Court below is sustained" It has also been decided by Judges Hopkinson and Baldwin, that slaves "were *then*, and yet *are*, considered as property; slavery yet exists in Pennsylvania, and the rights of the owners are now the same as before the abolition act." [See 1 Baldwin's Rep. 589.] See the following decisions of the highest tribunals of Pennsylvania affirming the existence of slavery: 4 S. & R, 218, 425; 4 Yates, 115, 109, 240; 1 Dal. 167, 475, 469: 2 Yates, 234; 7 S. & R., 386; 3 S. & R, 396; 6 Binney, 213; 1 Wash. C. C. R., 499; 1 Bro, 113; 5 S. & R., 62, 333; 4 Bin., 116; 4 Dall, 256, 260; 4 Wash. C. C. R., 399; 1 Wall., 155.

An action lies at common law for seducing and harboring a servant or slave. This right has always existed in Pennsylvania. [1 Bald., 571.]

A citizen of another State on a visit to this State with his slave, in case of the slave's refusal to return, is entitled to the aid of the magistrate to carry him out of the State.—[2 Dallas, 227.]

Pennsylvania had slaves in 1780 and in 1788, and in 1790, when the laws of 1780 and 1788 were continued in force by her constitution; and she still has slaves, recognized as such in the State, and returned as such under every preceding census; and as to their slaves, they are as much the property of their owners and the subject of sale within the State, as the slaves of Maryland. On this subject we have not only the decision of their highest tribunal, before quoted, but an uninterrupted series of adjudications to the same effect. In 1835, Judges Baldwin and Hopkinson decided a case of considerable importance as regards the rights of owners to their slaves. Judge Baldwin, in delivering the opinion of the Court, says: "While the abolition act put free blacks on the footing of free white men, and abolished slavery for life, as to those *thereafter born;* it did not otherwise interfere with those born before, or slaves excepted from the operations of the law; *they were* then, and *yet are*, considered as property; slavery yet exists in Pennsylvania, and the rights of the owners are now the same as before the abolition act; though their *number is small, their condition is unchanged.*"

No State in the Union has violated the solemn compact on the subject of fugitive slaves more violently than Pennsylvania. The Act passed the 8th of March, 1847, by the Legislature of Pennsylvania, entitled "An act to prevent kidnapping, preserve the public peace, prohibit the exercise of certain powers heretofore exercised by Judges, Justices of the Peace, Aldermen and Jailors in this Commonwealth, and to repeal certain slave laws," is perhaps one of the most odious and unconstitutional measures that has been enacted in any of the non-slaveholding States. It forbids the Judges of our Courts from taking cognizance of fugitive slaves; it attempts to impose a restriction upon the master, in using force to reclaim the slave; and the 8th section forbids the use of the jails and prisons of the Commonwealth, under the penalty of a fine of five hundred dollars, and disfranchisement of office during life.

NEW JERSEY.

The Lords Proprietors of New Jersey, in order to encourage emigration, not only gave large portions of land to every individual who would settle in the country, and also a proportionate number of acres for every man servant that he should bring with him before July 1, 1665, but "for every weaker *servant or slave*, male or female, exceeding the age of fourteen years, arriving there, sixty acres of land."—L. & Spicer, 21. And by the laws of the Colony of East New Jersey, passed in 1682, 1694, and 1695, [L. & S, 250, 340, 356,] slavery is recognized; and by the acts of the Colonial Legislature of 1713 and 1784, particular provisions are made on the subject; and this remained in force until it was repealed and provided for by the act of 1798, now in force. [See 1 Spencer, 384.]

The relation of master and slave existed by law in New Jersey when the present constitution was adopted; and that constitution has not destroyed that relation to that subject existing at the time of its adoption. [State vs. Port, 1 Spencer, 368; the State vs. Van Buren, 1 Spencer, 368.]

The judicial records of this State confirm the position, that under the laws already referred to, slavery had a legal existence in the State both before and *after the Revolution.* It is not necessary to cite with particularity the adjudications of the Courts in this State to prove the truth of the remark; nearly every volume of reports, from the organization of the Federal Government to the present time, abounds in cases recognizing the right of the master over his slave.

In 1804 the Legislature adopted the plan for the gradual abolition of slavery. This law was re-enacted in 1820, with many additional provisions not necessary here to notice; for some of them interfered with the owner's right to the person and services of such as were then held as slaves, but left that relation with all its rights and correspondent legal obligations. [See 1 Spencer, 371.]

By the act of New Jersey, of 14th March, 1733, (Elmer's Digest, 520,) slaves already within the State, it is expressly enacted, *shall remain slaves for life*, and *their sale* by their owners is permitted, except collusive sales of decrepid slaves. The importation of slaves, for sale, is prohibited under a pecuniary penalty, but certain persons are permitted to bring in certain slaves for their own use. [See Halsted, 253; 3 Halsted, 219, 275; 1 Penning. 10; Halsted, 162.]

It is true, that slavery is incompatible with liberty, and does not correspond with the true principles of a Republican Government; but it is recognized by our laws, and it exists in New Jersey. Negro slaves have always been looked upon in the same light *with other personal property*, and transferred in the same manner. It is a rule of property applicable to personal *property*, that possession constitutes a sufficient title against all persons except the rightful owner, who, whenever he appears, may claim and recover that which belongs to him. [See 6 Smith's opinion, concurring with the Chief Justice, 1 Coxe's Rep., p. 332]

NEW YORK.

In New York slavery existed to the same extent, as regards the relation between master and servant, as now exists in the slaveholding States, until very recently. By the colony laws of New York, prior to the Revolution, slavery was as firmly established in that State as in any of the Southern States, and the importation of slaves into New York *encouraged by law*. [See acts of 1730, 1740; 1 Colony Laws, 72, 193, 196, 288.]

The act of 20th March, 1781, (32, 56,) recognized slavery as in full force in New York, as also did the act of 1st May, 1785.—C. 58; see 29, 30.) The act of 22d of February, 1788, (C. 40,) enacted cotemporaneously with the adoption of the Constitution of the United States, recognized and continued the existence of slavery in New York, but prohibited the importation of *slaves for sale*.—1 Revised Stats., 656; K. & R., 1; R. L. 614; Session 36, ch. 38, §23, R. L. 208. In the case of Skinner vs. Fleet, 14 Johnson's Reports, 262, that where a slave ran away from his master, who was an inhabitant of the State of Connecticut, and came to the city of New York, where he was found, and was *sold by his master* to a person who was also an inhabitant of the State of Connecticut, but was then in the city of New York on business, that this *sale* was not such an importation into the State, as rendered him free.—2 John. Cases, 89. By the act of 4th July, 1799, (c. 62,) slaves born in the State after that date were declared free at twenty-eight years of age; but all others were continued as slaves. By the act of 30th March, 1810, the *importation of slaves, except by* the owner for nine month's residence, was prohibited; and most of the preceding acts were incorporated. By the act of 9th April, 1813, and finally by the act of July, 1827, slavery was finally abolished; whilst, by the act of 1788, and laws subsequently enacted, slaves subsequently imported into the State could not *be sold by the master* or owner; yet even these slaves were property in all other respects; *they were assets* for the payment of debts; they could be sold by a trustee or assignee of an insolvent's estate; by an administrator or executor, or by the sheriff under an execution; and all other slaves were subject to sale by their owners as all other property. [2 John. Cases, 79, 488, 89; 11 John., 68, 415; 17 John., 296.]

In 1794, A, the owner of a slave in New Jersey, removed to New York with the slave, and put the slave to service with B, until they or their executors should annul their contract. Chancellor Kent declared, in 2 John. Cases, 85, " That this part of the act, (of 1788,) concerning slaves, was made, as its preamble imports, to prevent the further importation of slaves into the State; a policy, the direct counterpart of that contained in one of our colony laws, (vol. 1, 283, 284,) which declared, that all due encour-

agement ought to be given to the direct importation of slaves. The act was hostile to the importation and to the exportation of slaves, as an article of trade, not *to the existence of slavery itself;* for it takes care to re-enact and establish the maxim of the civil law, that the children of every female slave shall follow the state and condition of the mother.

In the same case, Judge Benson says: "By the law of this State, *slavery may exist* within it; *one person can have property in another,* and *the slave is a part of the goods of the master,* and *may be sold,* or otherwise *aliened* by him; or remaining unaliened, is on his death *transmissible* to his executors. [See 2 Johnson Cases, 86.]

1st. It is affirmed by this decision, that slaves may be sold as other property, but imported slaves cannot be sold by the owners.

2d. That their issue may be sold even by the owner who imported their mothers.

3d. In all cases of persons acting in *outer droit,* as executors, assignees of *absent* or *insolvent* debtors, sheriffs on sale by execution, and *trustees* on whom the duty devolves, by the interpretation of law, the act does not apply, and imported slaves are liable to be sold.

While slaves are regarded and protected as property, they ought to be liable to the payment of debts.—[Per Kent, Justice. See vol. 1 and 2, Johnson's Cases, p. 84; Sable *vs.* Hitchcock.]

It was not considered to prevent a Sheriff from taking or selling a slave under an execution against the owner; and the slave was subject to the control and disposition of the executor or administrator of a deceased owner, in the same manner as *other personal property.* The prohibition was against a voluntary sale by the master of a slave imported or brought into the State. [Sable vs. Hitchcock, 2 John. Cor. 70; Cæsar *vs.* Peabody, 11 Johns. 68; Gelston *vs.* Russel, &c., 11 Johns. 415]

A slave is incapable of contracting so as to impair the right of his master to reclaim him; and if a private individual sue out process or interfere, it will be deemed illegal, and the claimant will have a right of action for any injury he may have received by such obtruction. [Glen *vs.* Hodges, 9 Johns. 69.]

The master of a slave who had run away to a free State, and lived there as a freeman, reclaimed him, and while in possession of the *master, a creditor of the slave* sued out an attachment against him, and took him from the master. That the slave was rightly reclaimed under the laws of the United States. [Glen *vs.* Hodges, 9 Johns. 67.]

The owner of a slave who deserts his master and works for another, need not give notice of his claim to entitle himself to an action for the slave services. [5 Cowen, 460.]

The statute of 1788 imposed a penalty for harboring slaves or servants; and as it was held, moreover, that this was constitutional, and did not destroy the common law remedy, which a master had by an action to recover damages for seducing and harboring his servant. [Skidmore *vs.* Smith, 13 Johns. 322]

The master might confine his slave in jail, and this it appears was done in a case decided as late as 1823. [Smith *vs.* Hoff, 1 Cow., 127.]

By the act for the gradual abolition of slavery all children born of slaves subsequent to the 4th of July, 1796, were declared to be free, but to continue servants *to the owners* of their mothers—males till the age of twenty eight, and females till the age of twenty-five. The act of 1817 made it the duty of the masters of such servants to give them certain education arriving at the age of eighteen, and in default of so doing declared the servant free at the age of eighteen; and in order that it might be known when the age was attained which discharged them from further servitude, the person entitled to such service was required within one year after the passage of the act, or after the birth of the child of a slave, to make an affidavit stating the age of such servant; and in default of making and filing such affidavit, within the time specified, the act declared the person so held to service free at eighteen. [Griffin *vs* Potter, 14 Wend., 209.]

Even after this act all those alive who were born in the State prior to the 4th of July, 1799, of females who were slaves at the time of the birth, continued slaves in that State, except such as had been emancipated by their owners.

At last by an act of the 31st of March, 1817, provision was made for the annihilation of slavery in the State of New York about ten years thereafter, by a section which declared that every negro mulatto or master within the State born before the 4th of July, 1799, should, from and after the 4th day of July, 1827, be free.

In New York the *writ de homine replegiando* has been more frequently resorted to than in the other States. In 1834, a man who was brought before the Recorder of the city of New York as a fugitive slave, sued out a writ of *homine replegiando,* upon which an issue was joined in the New York Circuit, and a verdict found that the man owed service to the person claiming him; on which verdict judgment was rendered. The Supreme Court of New York decided that the proper course then was, for the Re-

corder to grant a certificate allowing the removal of the fugitive. [See Floyd *vs.* Recorder of New York, 11 Wend., 180.] The claimant cannot be prevented from removing his slave by a writ *de homine replegiando,* sued out under the authority of a State law. [Jack *vs.* Martin, 12 Wendell, 311.]

CONNECTICUT.

By the law of Connecticut, of 1774 and of 1784, re-enacted and revised and continued in 1791 and 1821, *slavery was continued as to the slaves already in the State,* but all born after the first of March, 1784, were declared free.—See Statute, 423, 440; 1 Swift's ed., 230; 12 Con. Rep., 45, 59, 60, 64. In the case of a slave brought from Georgia to Connecticut in 1835, and left there for temporary purposes, such slave was declared free, one judge only dissenting, and he upon the sole ground that the slave was not left within the meaning of the act of 1784. In the case reported in 12 Conn., 38 to 67, and decided in 1827, it was held that slavery did exist as to slaves introduced prior to a certain date; that these slaves still continue to *be held as property,* subject to the control of their masters, and that numbers of them still continue so to be held, is proved by the census of the State in 1840. The doctrine of 8 Connecticut Reps., 393, was offered, in which it was declared that a certain negro in Connecticut "was the *slave* and *personal property*" of his master in Connecticut. This case was very elaborately argued by the counsel, and the opinion evinced great learning and ability. In deciding this case, the court was unanimous. [See 2 Root, 335, 317; 2 Conn., 355; 3 Conn. 467; 8 Conn., 393.]

That slavery has existed in this State, cannot be denied. [See 8 Conn. Rep., 402, per Williams I.]

Slavery, to some extent, has been recognized by the laws of this State. [Jackson *vs.* Bulloch, 12 Con., 38.

That the relation of master and slave is one recognized by the laws of this State.—[Stat. 428, tit. 93; Windsor *vs.* Hartford, 2 Conn. Rep., 355; Columbia *vs.* Williams, 3 Conn., 467.]

Peters I., 11. The relation of master and servant, or qualified slavery, has existed in *Connecticut* from time *immemorial;* and has been *tolerated* by the Legislature. But absolute slavery, where the master has unlimited power over the life of his slave, has never been permitted in this State. [2 Swift's Syst., 348; 1 B. C. Comm., 448; 8 Connecticut Rep., p. 398.]

"Upon the death of her master, Flora, not being devised, was transferred to the defendants, and being *a chattel,* vested in them; for the *personal estate* of a deceased testator vests absolutely in his executors. They alone *could sell her;* they became her masters, and she their slave; and they alone were to maintain her until she was *distributed* to his heir or legatees; and this obligation *followed the right of property* upon every transfer."

The daughter of a female slave born after the 1st March, 1784, is not a slave, though liable to be held *in servitude* until twenty-five years of age.—[Windsor *vs.* Hartford, 2 Con., 355.]

MASSACHUSETTS.

The subject of slavery occupied the attention of the legislature of Massachusetts, at one of the sessions in 1767. In Bradford's History of Massachusetts, page 189, we find the following remarks upon the subject of slavery: "As correct views of civil liberty and of the rights of men prevailed in the Province, greater sympathy for the Africans was manifested; and MANY OWNERS OF SLAVES gave up their claims to their services. At this period, it was computed that one third within the Province were in Boston."

Again: "Before the Revolution, *domestic slavery was not uncommon in the large towns* in Massachusetts; and as late as the year 1774, the public papers usually contained notices of black slaves for sale." [See Bradford's History of Massachusetts, p. 9, 303.]

The law as to slavery in Massachusetts is stated by Chief Justice Parsons, in a case which came before the Supreme Court of that State. [See Winchendon, et. al., vs. Hatfield, et. al., 4 Mass. Rep., 123.] "Slavery," he says, "was introduced into this country soon after its first settlement, and tolerated until the ratification of the present constitution. The slave was the property of his master, subject to his orders; and to reasonable correction for misbehavior, was transferable like a chattel, by gift or sale, and was assets in the hands of his executor or administrator. If the master was guilty of a cruel or unreasonable castigation of his slave, he was liable to be punished for the breach of the peace, and I believe the slave was allowed to demand sureties of the peace against a violent and barbarous master, which generally *caused a sale to another master.* And the issue of a female slave, according to the maxim of the civil law, *was the property of*

her master. Under these regulations, the treatment of slaves was in general mild and humane, and they suffered hardships no greater than hired servants."

In 1823, it was decided by the Supreme Court of Massachusetts, "that a slave belonging to a person in Virginia escaping into Massachusetts, after which the owner died, it was held, under the act of Congress of 1793, the slave might be seized without a warrant." [See Commonwealth vs. Griffith, 2 Pick., 11. Parsons delivering the opinion of the court.] These are the views of a Judge whose talents and character would grace any bench, to whom a disposition to exercise jurisdiction that is usurped, or to surrender his legitimate powers, will certainly not be imputed, who yielded without hesitation to the authority of the provisions of the act of 1793.

Upon a general review of the authorities, and upon an application of the well established principles upon this subject, we think they fully maintain the point stated, that though slavery is contrary to natural right, to the principles of justice, humanity and sound policy, as we adopted them and formed our laws upon them, yet not being contrary to the laws of nations, if any other State or community see fit to establish and continue slavery by law, so far as the legislative power of that country extends, *we are bound to take notice of the existence* of those laws, and we are not at liberty to declare and hold an act done within those limits, unlawful and void, upon our view of morality and policy, which the sovereign and legislative powers of the place has pronounced to be lawful.—[See 18 Pickering, 215. Per. C. J. Shaw.]

In 1841, in the Supreme Judicial Court, a case was decided by C. J. Shaw, which confirms all preceding adjudications relatively to the right of the master to reclaim his slave. He says: That "although bond slavery does not exist here, yet *by the laws of nations* it is legally existing, so far, that *nations regard the right which others exercise to hold slaves.* And it is on this ground that the Constitution recognizes slavery, and provides for the restoration of fugitive slaves. The States are, to some purposes, foreign to each other, and in respect to slavery, that is one of the particulars in which the Constitution so regards them. That principle, however, is limited to fugitive slaves." [See Law Reporter, vol. 4, p. 275; the Boston edition.]

CHAPTER XV.

Speeches and Writings of the prominent Statesmen of the non-slaveholding States upon the subject of Slavery; also, Addresses and Resolutions.

In 1788, a society in France, and another in England, formed for promoting the abolition of slavery, opened a correspondence with the Hon. John Jay, to which he replied. He says: "Prior to the Revolution, the great majority, or rather the great body of our people had been so long accustomed to the practice and convenience of *having slaves*, that very few among them ever doubted the propriety and rectitude of it."

"The Convention which formed and recommended the new Constitution, had an arduous task to perform, especially in local interests, and in some measure local prejudices were to be accommodated. Several of the States conceived that restraints on slavery might be too rapid to consist with their political circumstances, and the importance of union rendered it necessary that their wishes on that head should, in some degree, be gratified." [See Life of Judge Jay, by his son, p. 233.]

In the year 1798, being called on by the United States marshal for an account of his taxable property, he accompanied a list of his slaves with the following observations: "*I purchase slaves* and manumit them at proper ages, and when their faithful services shall have afforded a reasonable retribution."

As free servants became more common, he was gradually relieved from the necessity of purchasing slaves. [See Jay's Life, by his son, 235.]

Extract from the Life of Governeur Morris, vol. 1, p. 125. Mr. Morris was a member of the Convention which framed the Constitution of the United States:

"It is known full well that Governeur Morris struggled hard to introduce an article in the constitution of New York, in which he had the hearty co operation of Mr. Jay, and some others, and the purport of which was, that it should be earnestly recommended to

the future legislature of New York, to take some effectual measures for *abolishing domestic slavery*, as soon as it could be done consistently with public safety, *and the rights of private property.*"

Extract from a communication of the Hon. RUFUS KING, a Senator from New York, and for many years one of the most distinguished statesmen in the country, to John B. Coles and others.

"JAMAICA, (L. I.,) *November* 22, 1817.

"I am perfectly anxious not to be misunderstood in this case, never having thought myself at liberty to encourage, or to assent to any measure that would affect *the security of property in slaves, or tend to disturb the political adjustment which the Constitution had made respecting them;* I desire to be considered as still adhering to this reserve." [See 17 vol, Niles' Register, p. 215.

Extract from the speech of DE WITT CLINTON, of New York, delivered in the Senate of the United States on the Mississippi navigation:

"Many thousand of negroes were also carried off in violation of the treaty (1783,) and a very serious loss *was thereby inflicted on the agricultural portions of our Southern brethren.*"

Extract from the speech of JOHN W. TAYLOR, of New York, on the Missouri question. [See 18 vol. Niles' Register, p. 18.]

"If the weight and influence of the South be increased by the representation of which they consider a part of their property, we do not wish to diminish them. The *right by which* this property is held is derived from the Federal Constitution; we have neither inclination nor *power* to interfere with the laws of existing States in this particular; on the contrary, *they have not only a right to reclaim their fugitives wherever found,* but in the event of 'domestic violence,' (which may God in his mercy forever avert,) the whole strength of the nation is bound to be exerted, if needful, in reducing it to subjection, *while we recognize these obligations and will never fail to perform them.*"

Extract from the Hon. EDWARD EVERETT's speech on the claim of Martgny D'Auterive. [See Congressional Debates, vol. 4, part 1, p. 1058.] This speech was made on the amendment of Mr. Livingston, of Louisiana, making compensation for the loss of slaves in the service of the Government:

The real merits of the question, said Mr. E., may, in my opinion, be reduced to narrower limits then might be supposed from the wide range of the discussion. The claim arises under that provision of the Constitution—that amendment of the Constitution—by which it is guarantied that "private property shall not be taken for public use, without just compensation." Now, sir, by rejecting this amendment, we virtually introduce into this provision of the Constitution the qualification "excepting slaves." We make it read, "nor shall private property, excepting slaves, be taken for the public use without just compensation." I am prepared to say, without scruple, that if, at the time of discussing and adopting this amendment to the Constitution, it had been proposed to insert such a qualification of it, it would have been fatal, not merely to the amendment, but to the Constitution itself. I am willing to leave it to the candor and common sense of every gentleman in the House, whether a proposition going, in effect, to say that "private property, in slaves, might be taken for the public use, without just compensation," would have been entertained for a moment when the amendments to the Constitution were adopted.

An extract from Mr. ADAMS' speech in the House of Representatives, May 25, 1836. [See Niles' Register, vol. 50, page 277.]

"It was by the institution of slavery that the RESTITUTION of SLAVES, enticed by proclamation into the British service, could be claimed as PROPERTY. But for the institution of slavery, the British commanders would neither have allowed them to join their standard, NOR RESTORED THEM OTHERWISE then as liberated prisoners of war. But for *the institution of slavery, there could have been no* STIPULATION THAT THEY SHOULD NOT BE CARRIED AWAY AS PROPERTY, nor any claim of INDEMNITY for the violation of that engagement."

Mr. CAMBRELENG, of New York, on the Panama mission.

"My doctrines, sir, *on the slavery question, are the doctaines of my ancestors,* modified as they were by themselves in an act of confederation. In this one respect, they left society in the political condition in which they found it—a reform would have been

fearful and calamitous—a political revolution with one class was morally impracticable. Consulting a wise humanity, they submitted to the condition in which Providence had placed them; they settled the question in the deep foundations of the Constitution."—[See Cong. Debates, part 2, vol. 2, p. 2435.]

Extracts from Mr. FLETCHER's speech in the great meeting in Boston, in September, 1835:

"Time was when such sentiments and such language would not have been breathed in this community. And here, on this hallowed spot, of all places on earth, should they be met and rebuked. Time was, when the British Parliament having declared that 'they had a right to bind us in all cases whatsoever,' and were attempting to bind our infant limbs in fetters, when a voice of resistance and notes of defiance had gone forth from this Hall, then, when Massachusetts, standing for her liberty and life, was alone breasting the whole power of Britain, the generous and gallant Southerners came to our aid, and our fathers refused not to hold communion with slave holders. When the blood of our citizens, shed by a British soldiery, had stained our streets, and flowed upon the heights which surround us, and sunk into the earth upon the plains of Lexington and Concord, then when he, whose name can never be pronounced by American lips without the strongest emotion of gratitude and love to every American heart—when he, that slaveholder, (pointing to a full length portrait of Washington,) who from this canvass smiles upon you, his children, with paternal benignity, came with other slaveholders to drive the British myrmidons from this city, and in this hall, our fathers did not refuse to hold communion with them.

"With slaveholders they formed the Confederation, neither asking nor receiving any right to interfere in their domestic relations; with them they made the Declaration of Independence.

"The Constitution is the supreme law of the land. It does not sanction, it does not uphold slavery; and if this doctrine be true, that sacred compact has always been morally null and void. Not only do they thus absolve the conscience of all good men from the support of the Constitution, but the tendency is to alienate them from it, to diminish their attachment to the Union as one that ought never to have been formed. Their argument and language further tend to dissolve the bonds of Union by weakening our regard for our Southern brethren."

Extract from Mr. HILLHOUSE's speech on the treaty of 1794. These remarks are made in reference to the clause in the treaty of 1793, stipulating a restoration of the slaves carried off in violation of the treaty. [See Carpenter's Debates]

"His first inquiry, he said, should be, whether *negroes* were to be considered as property. This he believed must be admitted; they were thus recognized by the article itself, which says, negroes or other property. Negroes being mentioned amounts only to a specification of one kind of property, as in the Constitution it says, capitation or other direct taxes.

From the Albany Argus, 1835.

Extract from Hon. JOHN A. DIX's speech, who addressed the anti-abolition meeting of citizens of Albany, held at the Capitol:

"It is well known that this was one of the most delicate questions involved in the formation of the Constitution. Like every other of the same difficult character, it was disposed of in the general compromise of interests, which were the subject of deliberation and adjustment, and it is not too much to say, that the Union could never have been formed if the right of interference with this question, on the part of the General Government, had been insisted on."

Again: "But I go further; I hold that there is a political obligation arising out of the compromise of interests, on which the foundations of the Union were laid, to abstain from every species of interference which may tend to disturb the domestic quietude, or *put in jeopardy the rights of property*, which the Constitution was designed to secure. Indeed, I think it would not be difficult to show that this obligation is of higher order. On this point I desire to be distinctly understood. I do not intend to take a position, which, if maintained, would abridge the freedom of discussion or restrain the liberty of the press But I do contend that every principle of political justice, nay, every principle of humanity, demands that discussions shall not be persisted in, when it is manifest that their inevitable consequence is to render insecure the lives and property of those who, by themselves or their predecessors, were parties to the federal compact."

Hon. Thaddeus Stevens appeared for plaintiff in error, and contended that the act of Congress of 1793 embraces all existing and known remedies respecting fugitive slaves. It allows *recapture*; gives a penalty for obstructing the recapturing or for concealing the fugitive; and a right of action for the services. As it was reported in 16 Peters, 540, that the State cannot legislate on the subject, it follows, her Courts have no jurisdiction. And this would seem necessarily to follow from the decree, that the State cannot regulate the remedies of the owner seeking his property within her territory.—[See 10 Barr, Pennsylvania Reports, p. 114, in the case of Kaufman *vs.* Oliver.]

Extract from F. A. Tallmadge's speech at the anti-slavery meeting, held in the city of New York, in October, 1835.—[See Niles' Weekly Register, vol. 49, p. 111.] In speaking of the emancipation of the slaves in the South, he remarks:

"Even if they had the power of giving freedom to two millions of slaves, *could they think of doing so* without compensating their owners."

The foregoing views were sustained by Mr. John Neal, of Portland, Maine.

On Wednesday, the 7th of October, 1835, a meeting of the citizens of New York was held at Tammany Hall. Robert Bogardus was called to the chair, and P. P. Porcells, Secretary. F. A. Tallmadge introduced a series of resolutions, which were unanimously and enthusiastically adopted.

"*Resolved*, That our duty to the country, and our Southern brethren in particular, render it improper and inexpedient to agitate a question PREGNANT WITH PERIL and DIFFICULTY TO THE COMMON WEAL.

"*Resolved*, That we take this opportunity to express to our Southern brethren our fixed and unalterable determination to *resist* every attempt that may be made to interfere with the relations in which master and slave now stand, or guarantied to them by the Constitution of the United States."

The following resolutions were unanimously adopted at a meeting of the citizens held at Rochester, on the 13th of November, 1835. [See 49 vol. Niles' Register, p. 210.]

"1 *Resolved*, That we sincerely desire to witness the total abolition of slavery in these United States, AS SOON AS IT CAN BE DONE WITH DUE REGARD TO THE RIGHTS OF THE SLAVEHOLDERS, and *the welfare* of the country.

"3. *Resolved*, That the question of slavery is one *wholly within the jurisdiction of the respective States, and all interference on the part of other States as highly improper and impolitic.*

"LEVI A. WOODBURY, *Sec.* JAMES GOULD, *Chairman.*"

The meeting in New York was called to order by the Hon. Campbell P. White, who nominated the Mayor, Cornelius W. Lawrence, as President. Numerous patriotic resolutions were offered by the Hon Edward Curtis, and adopted by the unanimous voice of the meeting. The fifth and sixth resolutions were as follows:

Resolved, That we shall regard with deep regret the continuance of the excitement at the South, as far as it may be occasioned by the apprehension of danger from the exertions of a few misguided abolitionists in our community, because it implies too little confidence in *the rectitude and patriotism of the citizens generally at the North, and indicates too little reliance on the* EFFICIENCY OF THE LAW.

"*Resolved.* That we are not unmindful of the *constitutional obligation of the citizens of this Union* for mutual defence and protection, as well in the case of domestic violence as of foreign force; and however we may lament the necessity that, *in the formation of our Government, recognized as lawful* the condition of slavery in the Southern States; and however ardently we may hail the day, if it shall ever come, when they may be able and willing to abolish it; till then, and *while this Constitution endures*, we have no right *to transcend its provisions, and as we are fully bound, so are we ever ready to carry them into full effect.*

"Signed. CORNELIUS W. LAWRENCE, *Chairman.*"

The following letter was received by the Committee from the late Chancellor KENT. Extract:

NEW YORK, *August* 24, 1835.

"SIR: I have just received your note of the 22d instant, and I return my acknowledgment for the honor you have done me by the designation you mention. I am entirely in opinion with all that portion of my fellow-citizens who are decidedly opposed to the interference by abolitionists with the question and practice of slavery in the South-

ern States; and I approve, for instance, with the resolutions of Boston and Portland on that subject." [See vol. 49, Niles' Reg., p. 10.]

Extract from the speech of HARRISON G. OTIS, delivered in Faneuil Hall, Boston, August 22d, 1835. Speaking of the formation of anti-slavery societies, he says:

"Suppose an article had been proposed to the Congress that framed the instrument of confederation, proposing that the Northern States should be at liberty to form anti-slavery associations, and deluge the South with homilies upon slavery, how would it have been received? The gentleman before me has apostrophized the image of Washington. I will follow his example, and point to the portrait of his associate, Hancock, which is pendant by its side. Let us imagine an interview between them, in the company of friends, just after one had signed the commission for the other; and in ruminating upon the lights and shadows of futurity, Hancock should have said: 'I congratulate my country upon the choice she has made, and I foresee that the laurels you gained in the field of Braddock's defeat will be twined with those which will be earned by you in the war of Independence; yet such are the prejudices in my part of the Union against slavery, that although your name and services may screen you from opprobrium during your life, your countrymen, when the willow weeps over your tomb, will be branded by mine as man-stealers and murderers, and the stain of it consequently annexed to your memory.'"

Again: "Another clause in the Constitution is a contract on the part of the non-slaveholding States TO SEIZE and RESTORE RUNAWAY SLAVES—but why restore when you have taught the slave that he has a right to freedom?"

Extract from a letter of HARRISON G. OTIS, Boston, 17th October, 1831.—[See Niles Register, vol. 45, p. 43.]

"For my own part, I never doubted that the States of this Union are inhibited by the Federal compact from interfering with the plantation States in the management of their own slaves. The letter and spirit of the Constitution are opposed to it. The clauses which by implication permitted the importation of slaves for ten years, *and which provided for the delivering of fugitive slaves*, are nugatory and treacherous, if it can be lawful to annul them."

Diplomatic Correspondence.

Extracts from Mr. ADAMS' communication to the Right Honorable Lord Viscount Castlereagh, His Majesty's principal Secretary of State for the Department of Foreign Affairs, dated February 17, 1816:

"But *private* property not having been the subject to legitimate capture with the places, was not liable to the reason of the limitation; to which the American plenipotentiaries, therefore, assented only so far as related to artillery and public property. They did not assent to it as *related to slave and other priate property*. It was not a mere verbal alteration which they proposed; they adhered *to slaves* and other private property."

Again: "But in the present case it will not be pretended that the slaves, where removal is *complained of as a breach of the compact*, were the property of either His Majesty, of the naval officers in his service who carried them away, or of any of his subjects. They *were peoperty of citizens of the United States*, precisely the species of property which it was expressly stipulated should not be carried away."

"AUGUST 22, 1815.

"Our object was the restoration *of all property, including slaves*, which by the usages of war among civilized nations, ought not to have been taken. All private property on shore was of that description. *Slaves were private property.* * * * * Upon what ground could Great Britain have refused to restore them? Was it *because they had been seduced* away from their masters by the promises of British officers? But had they taken New Orleans, or any other Southern city, would not all the slaves in it have had as much claim to the benefit of such provisions as *the fugitives from their masters* elsewhere? How, then, could the place, if it had been taken, have been evacuated according to the treaty, without carrying away slaves, if the pledge of such provisions *was to protect them from being restored to their owners?* It was true, proclamations inviting slaves to desert from their masters had been issued by British officers, *We considered them as deviations from the usages of war.* We believed that the British Government itself would, when the hostile passions arising from the state of war should subside, consider them in the same light; that Great Britain would then be *willing to restore the property* or indemnify the sufferers by its loss. If she felt bound to make good the promises of her officers to slaves, she might still be willing to do an act of justice, by compensating the owners of the slaves for the property which had been irregu-

larly taken from them.—[Mr. Adams' Letter to the Secretary of State; See American State Papers, vol. 4, p. 117, Foreign Relations.]

Extract of a letter from Mr. VAN BUREN, Minister at the Court of St. James, to Mr. Livingston, Secretary of State, dated February 28, 1832, in relation to the slaves on board the brigs Encomium and Enterprize:

"The Government, while it most sedulously and rigorously guards against the further introduction of slave, protects at the same time, by remarkable laws, THE RIGHTS OF THE OWNERS OF THAT SPECIES OF PROPERTY *in the States where it exists, and permits it transfer from one of these States to another.*"

"Can it be that this principle of common law is applicable to a colony where, by the law of the place, *negroes* and *their descendants* who have not been emancipated by their owners are *slaves* and SALEABLE AS OTHER PROPERTY, where the masters rights are amply protected by particular laws."

"That the Government (Great Britain) will order the slaves in question to be given up to the claimants, and *reasonable indemnity* to be made to the latter for the damages caused by the destruction of their PROPERTY, and by the *loss of such of the slaves* AS MAY NOT BE FOUND."—[See Senate Doc., 2d sess. 24th Cong., 2 vol., No. 174.]

CHAPTER XVI.

The Admission of States.

Vermont was the first new State. She claimed, indeed, to be one of the original, making the fourteenth, and formed a constitution for herself in the year after the Declaration of Independence. But she was considered part of New York, which State, by its Legislature, consented, in 1790, that Vermont should be an independent State, and be admitted into the Union. The application was made to Congress February 19, 1791, and on the 18th an act was passed declaring that Vermont was "received and admitted" into the Union. No constitution was submitted to Congress or inquired for by that body. In fact, the permanent constitution of the new State was not made until 1793.

Kentucky was the second State admitted. The State was formed of territory detached from Virginia by an act of the Legislature of the State, dated in 1789. In 1791, an act of Congress directed that Kentucky should, on the 1st day of June, 1792, "be received and admitted into the Union as a new and entire member of the United States of America." The State constitution was not framed when the act of admission was passed. Congress was not in session at the date of the admission, and the Senators and Representatives took their seats before the State constitution had been submitted to Congress. It was received after the State was admitted, but no action was taken upon it at all.

The third State was Tennessee, formed out of territory ceded by North Carolina to the United States, by agreement, consummated in 1790, on condition that it should become a State. The people of the Territory formed a constitution in 1796, and petitioned Congress for admission as a State. This was the first constitution ever submitted to Congress with an application for admission. But no report was ever made upon it, and an act was passed June 14, 1776, by which Tennessee was admitted into the Union.

Ohio was the next in order—the fourth of the new States—the first formed of territory to which boundaries were affixed, and previous governments assigned by the exclusive authority of the United States. It was formed out of the Northwestern Territory ceded by Virginia, and accepted by Congress, on the terms prescribed by the ordinance of 1787, (before the formation of the present Constitution,) and ratified by Virginia. Congress provided government for the whole territory in 1789, and divided it into two districts in 1800. The Eastern District is the present State of Ohio. The right of admission of the States formed out of this territory was provided for by the ordinance, which declared that whenever any of the said States should have sixty thousand inhabitants, it should be admitted by its delegates into the Congress of the United States on an equal footing with the original States, in all respects whatever; and that if consistent with the general interest, States might be admitted with fewer than sixty thousand. In 1802, (April 30,) Congress passed a law authorizing the territory to form a constitution and State Government. In January, 1803, the constitution was presented to Congress, referred to a committee, which never reported on the subject, but a law was passed (February 19, 1803,) which is peculiar in its phraseology. It did not admit Ohio into the Union, but recited

that the people of the Eastern Division of the Northwest Territory had formed for themselves a constitution and State Government, " whereby the said State has become one of the United States."

Louisiana was the fifth new State, and here another form of admission was adopted. Louisiana was acquired from France in 1803, and erected into two Territories by act of Congress in 1804. The Territory of Orleans now forms the State of Louisiana. An act was passed in February, 1811, authorizing the people of the Territory to form a constitution and State Government, and providing that if the said constitution should not be disapproved by the next Congress, the State should be admitted. The constitution was formed in January, 1812, and the State admitted by law April 8, 1812. The tenth section of the act of 26th March, 1804, " erecting Louisiana into two territories, and providing for a temporary government thereof," prohibited the introduction of slaves into that territory, from any place, " except by a citizen of the United States removing into said territory for actual settlement, and being at the time of such removal a *bona fide* owner of such slave or slaves." [See Laws of the United States, Bioren's edition, 3 v., page 607, chap. 391, §10.]

In the case of Indiana, (the sixth new State,) formed out of the Northwestern Territory, another novelty occurred. Congress passed an act (April, 1816,) authorizing the people of the Territory to form a constitution and State Government. In June of that year a constitution was formed, but before Congress met to act upon the subject, the presidential election occurred, and Indiana elected presidential electors. At the meeting of Congress, Mr. Hendricks was admitted to take his seat in the House of Representatives. But the resolution admitting the State into the Union was not adopted until Dec. 11, and in February the votes of Indiana, cast before any act was done recognising her as a member of the Union, were received and counted by both Houses of Congress in convention.

Mississippi was the seventh new State. It was part of the territory now forming the two States of Alabama and Mississippi, which was ceded to the United States by Georgia and South Carolina Territory was added both on the north and south by acts of Congress By consent of the State of Georgia, two States were laid out in the territory. Congress several times refused their assent to the formation of a State; but in 1817 (March 1) an act was passed authorizing the people of the Western District of Mississippi to form a constitution and State government. The constitution was formed in August of the same year, and in December the State was admitted by resolution.

Illinois was the eighth State admitted, formed out of the Northwestern Territory, in pursuance of the ordinance of 1787. The act of Congress to enable the people to meet in convention and form a State, &c., was passed in April, 1818. The constitution was adopted in August, and the State admitted by resolution in December of the same year.

Alabama came into the Union the ninth of the new States, formed out of the remainder or eastern portion of the Mississippi territory after the formation of the State of Mississippi. The separate territory was organized in 1817, on the petition of the legislative council of the territory, an act of Congress was passed in 1819, (March 2,) authorizing a convention to form a State, a constitution was adopted in August, and the State was admitted by resolution in December of the same year.

Maine was the tenth new State. It was originally part of Massachusetts, and entitled the District of Maine. By consent of the State of Massachusetts, given by the Legislature on the 19th June, 1819, the people of the District of Maine formed a constitution and State Government in October, and in December petitioned Congress for admission into the Union as an independent State. The attempt was made to combine the admission of the two States of Maine and Missouri in the same bill, in order to keep out Maine, unless Missouri was let in. But it failed; and on the 3d of June, 1820, an act was passed declaring that from and after the 15th of the same month the State of Maine is declared to be one of the United States of America, and admitted into the Union.

Missouri was the eleventh of the new States. It was formed out of the Louisiana territory, of which the name was changed to the Missouri territory in 1812, and the Southern portion taken off in 1819, and called the Arkansas Territory.

Arkansas was the twelfth in order of the new States admitted into the Union. It was formed of the southern portion of the Missouri Territory, and the territorial government was established in 1819, (March 2.) Michigan, the thirteenth State, formed out of the Northwestern Territory, and claiming a right of admission under the ordinance of 1787, with a territorial government established as early as 1805, but with boundaries altered extensively by various acts, made application at the same time with Arkansas for admission, and the two were pushed through together.

Michigan was admitted on the same day, prospectively, and on condition that a convention of delegates, elected by the people of Michigan, for that single purpose, should declare their assent to the act of Congress, establishing the boundary between Michigan and Ohio. A convention was held, which did accept the act, but great opposition was made again, on the ground that the convention was an unauthorized meeting of private individuals, chosen without any authority from the State Government. The objection was strongly urged, but Congress did not sanction it, and a final act was passed January 26, 1837, declaring her admission as one of the United States of America.

Florida was the fourteenth State admitted, application being made at the same time for the admission of Iowa, a Northern State, as the fifteenth new State. Florida was formed out of territory acquired by the treaty from Spain, and the territorial Government was established by Congress, March 30, 1822. The people of Florida held a convention without previous authorization from Congress, made a constitution, and applied for admission into the Union in February, 1839. Congress did not accede to their request for several years, and the Territory remained under its territorial form of government. Under this same constitution of 1830, Florida was at length admitted with Iowa, both included in the same bill, March 3, 1845.

To the admission of Iowa nothing more was required but the proclamation of the President, as in the case of Missouri. But Iowa did not assent in the form. A new constitution was formed and presented to Congress, and an act was passed for her admission, dated December 28th, 1846.

Texas was the sixteenth new State, and the twenty-ninth of the States of the Union—an independent Republic—admitted into the Union by joint resolutions, which passed March 1st, 1849.

Wisconsin, the thirtieth and youngest of the States, was formed out of the Northwestern Territory, and established a territorial government, April 20, 1836. August 6, 1846, an act of Congress was passed authorizing the people of Wisconsin to form a constitution and State Government, and for the admission of the State into the Union. The constitution was framed and presented to Congress, and the State admitted (March 3, 1817,) on condition that the constitution should be acceded to by the qualified electors of the State.

It will be seen that States have been admitted with and without the previous authorization of Congress—formed of territory derived from cession by the individual States—from portions of States previously organized as members of the Union—of territory purchased from foreign Governments—and one State existing as an independent Republic beyond the Union; that admissions have been refused to the first and second applications—have been granted conditionally and unconditionally; to take effect immediately, to take effect prospectively, and to take effect contingently at a future day.

Number of slaves in non-slaveholding States.

With the view of showing the number of slaves in those States generally denominated free States, at the period of the formation of the Constitution and subsequent, we refer to Senate Document, 505, containing the census of each State, compiled by the Department under the resolution of Congress of July 26, 1833, and the supplementary returns for 1840. The census of 1850, does not include slaves in the *free* States.

	1790.	1800.	1810.	1820.	1830.	1840.
New Hampshire	158	8				
Rhode Island	952	381	108	48	17	5
Connecticut	2,759	951	310	97	25	54
Vermont	17					
New York	21,324	20,343	15,017	10,088	75	3
New Jersey	11,423	12,422	10,851	7,557	2,254	658
Pennsylvania	3,737	1,706	795	211	403	31
Delaware	8,887	6,153	4,177	4,509	3,292	2,613
Illinois			168	917	747	184

And yet these nine States, now denominated free States, did, so far as they existed in 1790, hold slaves, and acknowledge property in slaves, and the sale of slaves within their boundaries were valid.

But our limits admonish us to bring these remarks to a close. The incalculable importance of the grave questions which we have analyzed, has drawn us into a longer discussion than we had anticipated. But the subject swells under our contemplation the more we mark its bearings upon the present prosperity and the future fate

of our beloved country. In truth, no questions have arisen since the establishment of the Federal Government which appear to us to be fraught with more dangers, if they should, in the judgment of the people be erroneously decided upon, by a misapplication of the principles of constitutional law. Intemperance of *sectional divisions*, wherever found, ought never to meet with an advocate in a patriot It is a most calamitous scourge to any country. The fiercest and most ungovernable passions of our nature—ambition, pride, rivalry, and hate—enter into its dangerous composition, made still more so by its power of delusion, by which its projects against the integrity of the Union are covered in most instances, even to the eyes of its victims, by the specious show of patriotism. Thus composed, who can estimate its force? Where can those feelings be found sufficient to counteract its advancement? Is love of country? Alas! the attachment to *sectionalism* becomes stronger than our whole country. It produces a state of alienation between different sections of the confederacy, and thus involves us in the vortex of that tremendous comet which—

———"From its horrid hair
Shook pestilence and war."

It is now upwards of half a century since the present admirable system of Government first came from the hands of the illustrious sages, whose memories will always be revered, who have given us a practical, and, as they hoped, a permanent constitutional compact. The Father of his Country did not affix his illustrious name to so palpable an absurdity, as to allow a State to arrest the operations of the Federal Government; nor did the States, when they severally ratified it, do so under the impression that a veto on the laws of the United States was reserved to them, or that they could exercise it by implication. If this were allowable, it would be just as rational to suppose that the planetary system could continue to perform all its revolutions, with the same beauty, order, and harmony, which have been assigned to them by nature, were the laws of projection, attraction, and gravitation, to be totally suspended, as it would be to suppose that thirty confederated States could exist in harmony, and perform their federative functions, were each State to have the power of arresting or suspending the operation of the laws of the Confederacy, whenever in the opinion of the functionaries of any single State, it should be thought expedient for the interest of that State to do so.

The question then is, whether the evils with which the body politic is afflicted, can be mitigated or harmonized by any system of dissolution. We think not. All history demonstrates the fact, that confederacies have been the fruitful matrix of internal dissensions and domestic feuds. How was it with the Amphictyonic League of Ancient Greece? The jealousies existing between the members of the League, particularly Athens and Sparta, its leading members, (which jealousies, too, grew out of the relations to one another created by the League itself,) involved them in perpetual controversies, and finally led to the Peloponnesian war, which terminated in its dissolution. Modern Europe affords us an equally instructive lesson. The history of the Germanic body, for centuries, is nothing but the history of the bloody and cruel wars among the Princes and States which composed it. The scheme of a dissolution of the Union, therefore, instead of affording a remedy for the evils, which are alleged to be unbearable, would but serve to aggravate them, and render the situation of the country still more deplorable than it would be by the continuation of the present condition of things.

The mere agitation of the question as regards the dissolution of the Union must be attended with the most serious consequences. The lofty character of our country (which is but another name for strength and power) will be made to droop by such proceedings; the national pride humbled; the high hopes of the people blasted; their courage tamed and broken; their prosperity struck to the heart; their foreign rivals encouraged unto arrogance.

The Union of these States is the fairest political fabric that has ever been reared by human mind. Its foundation was laid upon "the lives, the fortunes, and sacred honor," of a constellation of as illustrious patriots as ever adorned an august assembly of this or any other age. It was cemented with the blood of our fathers. It has made our Government the admiration of the world. It has been a beacon-light to bear the benighted nations of other regions to the altars of republican liberty. It has led the world to believe that man is capable of self-government, and that he was practicing upon its principles. It has given us a proud elevation abroad as a member of the family of nations; and it has shed a brilliant lustre upon the character of Republics, which the Republics of antiquity never attained.

Printed and published by Jno. T. Towers, Washington, at $5 per hundred copies.

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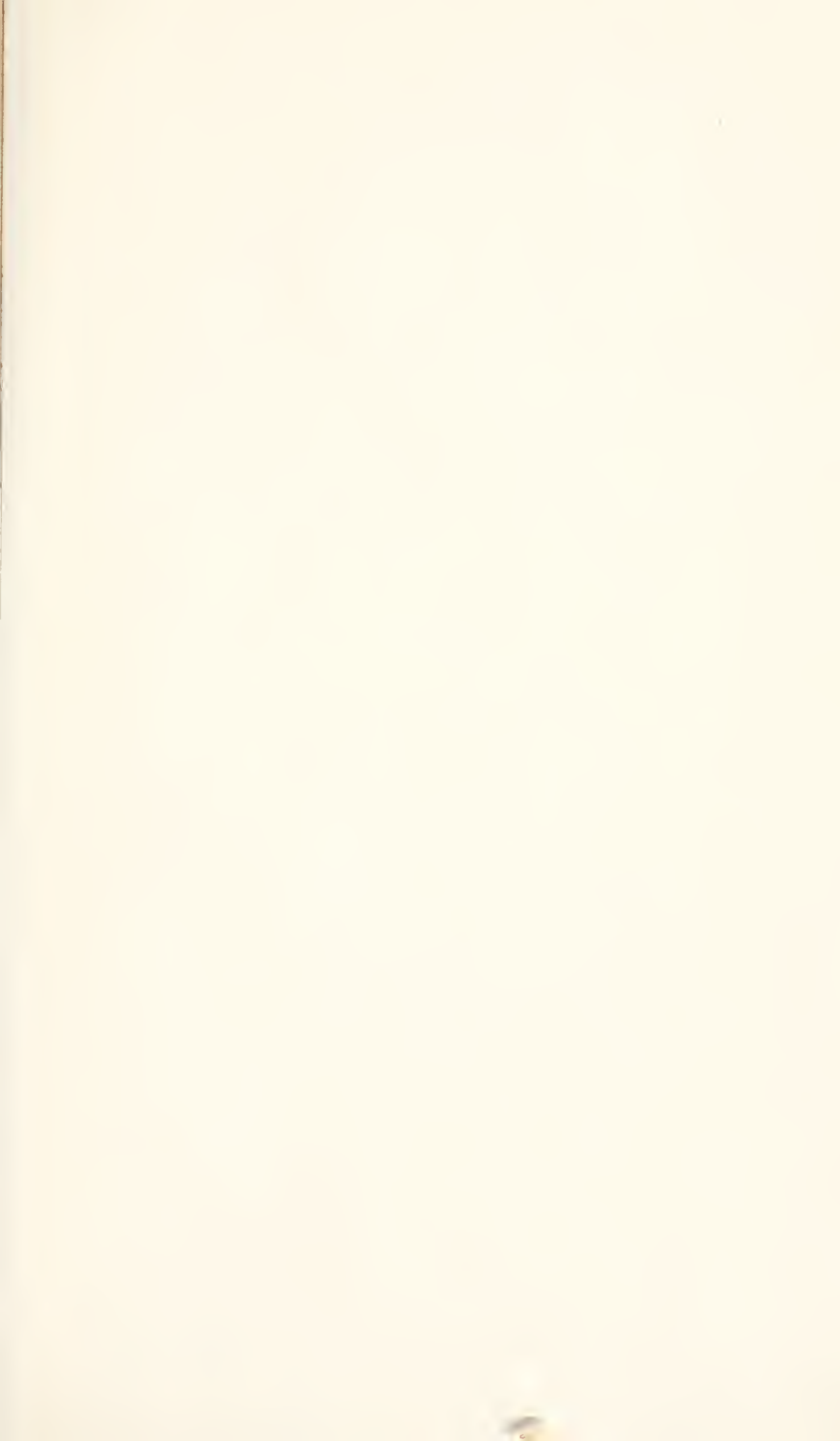

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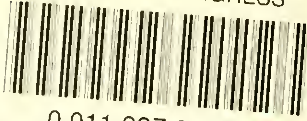

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